

J42VTUZ1

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

4 v.

15 CR 536 (PGG)

5 KALEIL ISAZA TUZMAN,
6 OMAR AMANAT,

7 Defendants.

FATICO HEARING

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8 New York, N.Y.
9 April 2, 2019
10 12:45 p.m.

11 Before:

12 HON. PAUL G. GARDEPHE,

13 District Judge

14 APPEARANCES

15
16 GEOFFREY S. BERMAN,
17 United States Attorney for the
18 Southern District of New York
19 JOSHUA A. NAFTALIS
20 ANDREA M. GRISWOLD
21 Assistant United States Attorneys

22 AVI WEITZMAN
23 DAVID P. SALANT
24 JUSTINE M. GOEKE
25 Attorneys for Defendant Tuzman

RANDALL W. JACKSON
GRAINNE O'NEILL
Attorneys for Defendant Amanat

ALSO PRESENT: LUKE URBANCZYK, Paralegal Specialist, USAO

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1 THE COURT: All right. So we're going to be resuming
2 with the testimony of Mr. Voetmann. I hope I pronounced that
3 correctly.

4 THE WITNESS: Close.

5 THE COURT: Close. Sorry.

6 You remain under oath, sir.

7 THE WITNESS: Thank you.

8 THE COURT: Please proceed.

9 MR. JACKSON: Excuse me, your Honor.

10 We don't have to address it now, but I do just want a
11 placeholder for later on discussing the fact that I do want to
12 clarify for the record some of what transpired today with
13 Mr. Amanat before court.

14 THE COURT: Okay. We can do that now if you want.

15 MR. JACKSON: I just want to clarify, I know the Court
16 was required to enter a force order this morning.

17 THE COURT: Right.

18 MR. JACKSON: Mr. Amanat did not refuse to come to
19 court and, in fact, was eager to come to court. He simply
20 notified -- he's in the SHU. And he notified the people who
21 came by this morning that his hearing wasn't until 12:30, and
22 expressly told them he was not refusing to come to court.

23 And at that point they told him, Well, if you're
24 saying he's coming at 12:30, then we're going to mark you down
25 as refusing.

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1 And he said, I'm not refusing. I want to go to court.
2 I'm just telling you the accurate time.

3 THE COURT: So they came to him much earlier today, is
4 that what you're saying?

5 MR. JACKSON: Yes, your Honor.

6 So he did not refuse; he's been eager to come to
7 court. And I think there was just some confusion about what
8 transpired in the SHU communication.

9 He's there. He has an injury. But he has been eager
10 to come to court.

11 THE COURT: I appreciate you saying that.

12 The reason, of course, why I issued the order is I did
13 regard it as critical for Mr. Amanat to be here. But I'm glad
14 to hear the clarification you made, Mr. Jackson.

15 How is the foot, while we're on the subject?

16 DEFENDANT AMANAT: It's still a displaced fracture, so
17 it's not healing. And it requires surgery in the next two to
18 three weeks. I don't know what date I'm going.

19 THE COURT: All right.

20 Well, Mr. Jackson or Ms. O'Neill, if either one of you
21 think Mr. Amanat's medical problems are not being addressed
22 properly, you'll let me know.

23 MS. O'NEILL: I will, yes, your Honor.

24 MR. JACKSON: One other minor thing, Judge.

25 We've been requesting a kosher meal for Mr. Amanat,

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1 because all he got was a bologna sandwich yesterday. We were
2 advised by the marshals we couldn't give him any food.

3 Yesterday we sent a notification to the MCC. They
4 said it was logged in the system now, that for the hearing
5 today he would get a kosher meal. He did not. He got a
6 bologna sandwich again.

7 So if it's okay, I would like to at some point request
8 the Court allow him to have a snack so that he doesn't go until
9 6 p.m. without any food.

10 THE COURT: All right. That's approved.

11 MR. JACKSON: Thank you, Judge.

12 THE COURT: Now, have you and Mr. Weitzman talked
13 about how things are going to go this afternoon? Because you,
14 Mr. Jackson raised some concerns.

15 MR. WEITZMAN: Yes, we have. And I think we're going
16 to be able to work it out.

17 If it's a convenient time, and I think there will be
18 breaks, because of the way we've organized the
19 cross-examination, by 3:30, 3, 4, whatever it is that it's a
20 convenient time, he will be permitted to cut in for an hour.

21 So I very much hope that we will be done by 3:30 or 4
22 with our cross-examination.

23 THE COURT: Excellent.

24 All right.

25 MR. NAFTALIS: Your Honor, I just wanted to flag for

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Voetmann - cross

1 you, Ms. Griswold may be coming or may not be coming.
2 Something has come up which, unfortunately, has pulled her
3 away. So I'll be handling the witness. But she may come, and
4 it will be a surprise to both of us.

5 THE COURT: Okay.

6 All right. Mr. Weitzman, are you prepared to proceed?

7 MR. WEITZMAN: We are, your Honor.

8 My colleague Mr. Salant will be beginning.

9 THE COURT: All right.

10 MR. SALANT: Good afternoon, your Honor.

11 David Salant, for Mr. Isaza Tuzman.

12 THE COURT: Please proceed, Mr. Salant.

13 TORBEN VOETMANN, resumed.

14 CROSS-EXAMINATION

15 BY MR. SALANT:

16 Q. Dr. Voetmann, good afternoon.

17 A. Good afternoon.

18 Q. Your firm was retained by the government in this case?

19 A. Can you repeat the question?

20 Q. Your firm was retained by the government in this case?

21 A. That's correct.

22 Q. Your assignment was to assist the Court in determining the
23 approximate loss amount to third-party investors in KIT Digital
24 related to the charged market manipulation conspiracy; is that
25 right?

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Voetmann - cross

1 A. That's what I have in my report; correct.

2 Q. To estimate that loss amount, you looked at days on which
3 KIT Digital's stock price increased beyond its predicted
4 return?

5 A. I performed several tasks to check whether the amount the
6 government had produced was correct or was reasonable; correct.

7 Q. And all of your tests were based on measuring the increases
8 in KIT Digital stock above its predicted return?

9 A. Yes.

10 Q. Yesterday you explained to us your general approach, which
11 was to take daily price returns in KIT Digital stock and to
12 remove market and industry movement; is that right?

13 A. That's correct. I used Dr. Ferrell's event study that
14 removed market industry movements to get a reasonable return.

15 Q. So the concept here is what is left is stock price movement
16 specific to the stock?

17 A. It could be specific to the firm-specific news on that day.

18 Q. So it's movement specific to the firm?

19 A. Well, so as Dr. Ferrell stated, aside from stock
20 manipulation, there are three other factors: Market, industry,
21 and firm-specific. So those are the factors I considered.

22 Q. So with those three factors considered, market removed,
23 industry removed, what remains is firm-specific, right?

24 A. And part of that, as Dr. Ferrell stated, is a potential for
25 stock manipulation as well.

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Voetmann - cross

1 Q. So what remains is firm-specific price movement?

2 A. As long as you assume in that definition you include
3 manipulation.

4 Q. So you agree. We are in accord?

5 A. With that definition, I would agree with that.

6 Q. Okay. This is what you call the positive residual; is that
7 right?

8 A. The days in which the actual return was above the predicted
9 return would be a positive residual.

10 Q. You also call it abnormal return?

11 A. That's the common used term, as well, in the academic
12 literature.

13 Q. And in this context, what's meant by the term "abnormal
14 return" is that the daily return in the stock is unexplained by
15 the market and industry factors you removed, right?

16 A. That's a fair statement.

17 Q. And in general, your approach adds up all of these
18 residuals, right?

19 A. Well, I went a step further. I didn't just add up these
20 residuals.

21 Q. Specifically, your report adds up the residuals under four
22 sets of conditions that you describe in your report; is that
23 right?

24 A. There's one more step I think you're missing there. I also
25 adjusted the residual for the proportion of Maiden Capital

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Voetmann - cross

1 trades on a given day.

2 Q. Understood.

3 And taking into account the weighting of the residuals
4 you just described, what I explained before was correct?

5 A. Yes, it's the residual, but you need to include in that
6 explanation that you adjust for the proportion of the Maiden
7 Capital to reference it to the first test that I did.

8 Q. Understood.

9 Now, the charged conspiracy period that you looked at
10 was December 31st, 2008 to September 15th, 2011; is that right?

11 A. That's correct.

12 Q. You use those dates because those are the dates that were
13 identified in the presentencing investigation report, or PSR,
14 that were identified in that document?

15 A. That's correct. It was in paragraph 151 to 154.

16 Q. You did nothing to determine for yourself whether the
17 manipulation scheme that was alleged actually began or ended on
18 that date, right?

19 A. No. My assignment was to examine the calculation the
20 government had put forward, and then take into account or
21 review the concerns that Ferrell had raised. So the
22 government's calculation specifically addressed that period; so
23 that's the period I addressed as well.

24 Q. So to be clear, you did nothing to determine for yourself
25 whether the start or end dates should have been those dates?

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Voetmann - cross

1 A. I was not asked to examine the start and end date.

2 Q. And therefore you did not do so?

3 A. I did not.

4 Q. All right.

5 Each of the daily residuals you were adding up in your
6 report reflects an increase in KIT Digital stock over the
7 expected return, right?

8 A. Yes. I just want to be careful, when you say "adding up."

9 I make a calculation each day before I then sum them
10 up.

11 Q. Okay. Each of your estimates involves a summing up of
12 residuals, right?

13 A. It's a summing up. Not a residual, but the dollar amount
14 of that residual based on the value of KIT Digital on a
15 particular day.

16 Q. Understood.

17 And so your methodology is based on the notion that
18 these positive residuals multiplied by market capitalization
19 and weighted, as you've just described, approximates the stock
20 price's inflation accounting for market and industry movement?

21 A. Yes.

22 Q. You used this measure of the aggregate inflation as your
23 measure of loss, right?

24 A. No. I went a step further.

25 Remember, I adjusted for firm-specific information.

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Voetmann - cross

1 So depending on the day you are referring to, I would adjust
2 for firm-specific news, and I still also weighted it for Maiden
3 Capital trading. So I only looked at days over that period
4 where there was Maiden Capital trades.

5 Q. So having made all of those adjustments, you are using a
6 measure of stock price inflation as an estimate of loss?

7 A. That's correct. Because, as Dr. Ferrell wrote in his
8 report, the conspiracy scheme was intended to inflate the stock
9 price of KIT Digital.

10 Q. Dr. Voetmann, you've been involved in many securities case,
11 right?

12 A. I have.

13 Q. You would agree that in a securities fraud case, the loss
14 amount typically measures stock price decline resulting from
15 the charged offense, right?

16 A. In a typical class action there would be a corrective
17 disclosure; and in a typical class action, you would measure
18 the impact on that corrected disclosure date.

19 Q. So in a typical securities case, you are looking at stock
20 price decline?

21 A. I think that depends. It's a very general statement.

22 So in a class action you might have information where
23 there is disclosure of omission -- misrepresentation that's
24 being revealed to the market. When that truth comes to the
25 market, you might look at a decline.

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Voetmann - cross

1 But you could also look at other days where a company
2 is trying to inflate the price of a security, and then
3 inflating the price on a given day. So it really depends,
4 depending on the class action you're looking at.

5 Q. So let's make this very simple.

6 Would you agree that it is the reduction of price in a
7 security that harms the holders of the security?

8 A. I don't think that's an adequate statement. Because you
9 can also have a conspiracy scheme with the intent of increasing
10 the price to the benefit of the person who's committing the
11 conspiracy scheme.

12 Q. Understood.

13 And so shareholders holding the stock in that
14 situation would, in fact, experience an increase in the value
15 of the shares they hold while the inflation occurs?

16 A. The shareholders might experience an increase in return as
17 well. But when the truth might come out about the conspiracy
18 scheme, they might lose that value that they have earned.

19 Q. Precisely.

20 So in the context of market manipulation, for an
21 innocent shareholder to be harmed, they must buy the stock at
22 an inflated price and hold it while the inflation dissipates,
23 right?

24 MR. NAFTALIS: Objection.

25 THE COURT: Grounds.

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Voetmann - cross

1 MR. NAFTALIS: Is this a legal conclusion or is
2 this --

3 THE COURT: I don't understand it to be a legal
4 conclusion. You're not offering -- I mean this question
5 doesn't have to do with a legal conclusion, does it? It
6 sounded like a factual question to me.

7 MR. SALANT: Yes, your Honor.

8 THE COURT: All right. So that's the way I understand
9 it. So I'm overruling the objection.

10 BY MR. SALANT:

11 Q. Would you like me to ask it again?

12 A. Sure. Please.

13 Q. In the context of market manipulation, for an innocent
14 shareholder to experience loss, they would need to buy the
15 stock at an inflated price and hold it while the inflation
16 dissipates; is that right?

17 A. I think that depends. Give me a minute.

18 I think that depends on what type of stock
19 manipulation are we talking about.

20 So in this case, we have a conspiracy scheme, as I
21 understand it, from reading the presentencing document and Dr.
22 Ferrell's report where the intent was to inflate the price to
23 the benefit of the person who committed that scheme.

24 Q. I'll ask you the same question again.

25 For an innocent shareholder to experience loss, they

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Voetmann - cross

1 would need to buy the stock at an inflated price and hold it
2 while the inflation dissipates. Do you agree or disagree with
3 that?

4 A. In a traditional class action, that is definitely the
5 definition we operate under when we calculate loss to an
6 investor.

7 Q. And similarly, for an innocent shareholder to realize loss,
8 they must buy the stock at an inflated price and sell it after
9 the inflation dissipates, right?

10 A. As a general definition.

11 But in this particular case, I did not look at the buy
12 and sell of these individual investors. I was examining Dr.
13 Ferrell's concern with the government's calculation. And I
14 made the adjustments and corrections that he suggested you
15 should make to their calculation.

16 Q. Understood. We'll get to all that.

17 But to be clear, your analysis does not measure any
18 price declines as a result of the charged market manipulation,
19 right?

20 A. My analysis measures the benefit to the defendant in this
21 case from the Maiden Capital trades.

22 Q. So I'll just ask the same question again.

23 Your analysis does not measure any stock price
24 declines as a result of the market manipulation; correct?

25 A. I only looked at the positive residuals. I did not look at

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Voetmann - cross

1 negative residuals.

2 Q. So that's correct?

3 A. So I did not look at negative residuals, that's correct.

4 Q. And indeed, Dr. Voetmann, you're aware that there was no
5 stock price drop at the conclusion of the market manipulation
6 scheme, are you aware of that?

7 A. I've seen the data. I'm not aware if at the conclusion
8 what the corrected disclosure was. But I've seen the data.
9 The value of KIT Digital increased over the conspiracy period
10 from 5.25 all the way up to about \$9 at the time of September
11 2011.

12 Q. I'm not sure I understood your answer.

13 Following September 15th, 2011, was there a decline in
14 the stock price of KIT Digital?

15 A. I did not look at that.

16 Q. Let's take a look.

17 Dr. Voetmann, I'm handing you what's been marked as
18 Defendant's Exhibit F110.

19 Just for the record, Dr. Voetmann, I'll represent to
20 you that this chart was created using a spreadsheet produced by
21 the government to the defense prior to this hearing. That
22 spreadsheet was entitled "Figure and Appendix C," and it was
23 produced under the Bates number USAO_Tuzman_ 0346174.

24 Dr. Voetmann, do you see the chart in front of you?

25 A. I do.

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Voetmann - cross

1 Q. Do you recognize this chart?

2 A. I have a similar chart not through December, but I have a
3 similar chart in my report.

4 Q. So would you agree that this is a chart that takes the KIT
5 Digital closing stock price and extends it by three months past
6 what your chart showed?

7 A. That's correct.

8 Q. So I'll ask you again, in the three months following
9 September 15th, 2011, there was no collapse in KIT Digital
10 stock price, was there?

11 A. Well, there was certainly an increase. And I would note
12 that in the presentencing report, in the government's
13 calculation to see if their analysis -- their calculation was
14 reasonable, they mitigated for the three months or the 90-day
15 period after their calculation. So they mitigated by taking
16 the average price of those 90 days versus the average price
17 during the conspiracy period. So they accounted for that
18 increase in price for December 15th.

19 Q. We'll discuss that later.

20 For now, you agree that following September 15th,
21 2011, the stock price of KIT Digital increased?

22 A. So I can't exactly see on here when September 15 is, but,
23 yes, it appears that it increased.

24 But it also appeared that it might have fallen in the
25 month after September 15th, and then it spiked in

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Voetmann - cross

1 October/November, and then fell down in December.

2 Q. All right.

3 A. And I did not look at any news stories that might have come
4 out during that time period that could explain that increase.

5 Q. Dr. Voetmann, it is fair to say that criminal market
6 manipulation is not your area of expertise; is that right?

7 A. Well, I'm not an attorney and I don't present myself to
8 understand the criminal side of it. But when it comes to the
9 economic analysis that might be used in such a case, I think
10 the experience I have in class actions and other cases would be
11 applicable.

12 Q. As an econometrician, you have never published on the topic
13 of market manipulation, have you?

14 A. I have not.

15 Q. You've never written a report estimating loss amounts in
16 connection with market manipulation offenses, have you?

17 A. Well, I have not filed as an expert report, but I have
18 worked for almost 20 years as a consultant. And over those
19 years I worked on many projects that may have touched on
20 situations like this.

21 Q. You've never before presented a report like this one to a
22 court, have you?

23 A. Again, I think that depends on -- you say such a report.
24 In terms of using an event study in a report, I've done that
25 many times. When it comes to calculating returns, I've done

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Voetmann - cross

1 that many times.

2 Q. The question is simple: Have you ever presented a report
3 calculating losses in a market manipulation case to a court?

4 A. Not to a court.

5 Q. Have you ever before seen a report using this methodology
6 that you advance presented to a court?

7 A. So are you talking -- so generally I've seen many reports
8 that have advanced the general accepted methodology of an event
9 study, as Dr. Ferrell recommended we should do here. Event
10 studies have been around for 50 years; it's a very common
11 methodology. And that certainly had been produced in many,
12 many reports and advanced to many courts.

13 Q. Dr. Voetmann, to be clear, I'm not talking about an event
14 study, I'm not talking about Professor Ferrell's report. Do
15 you understand? I'm asking if the calculation of loss amount
16 proceeding in this way, if you ever seen that presented to a
17 court before?

18 MR. NAFTALIS: Your Honor, objection.

19 I'm a little confused. They did the exact same thing
20 at trial, and now they are impeaching the witness on their own
21 event study. So I just want to use the Court's time
22 efficiently.

23 MR. SALANT: Forgive me your Honor, I disagree.

24 THE COURT: I'm sure you do.

25 But maybe you could help me understand. As I

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Voetmann - cross

1 understand it, this witness's work is premised on a study that
2 Dr. Ferrell did. So I think what Mr. Naftalis is saying, it
3 appears that you -- and maybe you're not. It appears that
4 you're trying to impeach the work that Dr. Ferrell did. So
5 maybe you can help me understand why that's not what you're
6 doing.

7 MR. SALANT: Yes, your Honor.

8 BY MR. SALANT:

9 Q. Dr. Voetmann, you used -- oh, pardon me.

10 MR. WEITZMAN: Do you want us to address this to your
11 Honor now or through questioning? Because I'm happy to address
12 it now.

13 THE COURT: Why don't you give me your side of it,
14 either one of you, I don't care who wants to address it, but,
15 yes.

16 MR. WEITZMAN: Professor Ferrell made very clear he
17 was not measuring loss amount, he was not identifying causation
18 with respect to whether any trades by Maiden caused a stock
19 price increase. What he was doing was ruling out the
20 possibility that there was an abnormal stock price increase on
21 the days that Maiden testified he was manipulating the market.
22 That's a very different calculation than a loss amount
23 calculation, which he never did, never purported to do.

24 So it's not a critique of the event study; it's a
25 critique of how you use the event study and what its import is.

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1 THE COURT: All right.

2 Mr. Naftalis, do you want to respond?

3 MR. NAFTALIS: Your Honor, I don't really understand
4 the distinction.

5 Dr. Ferrell got up there and said that he's the
6 foremost expert in event studies, and this is the way you
7 figure out if the market has been manipulated. This witness
8 accepted that as true, and then basically added a column and
9 did some math as to what does Dr. Ferrell's analysis show.

10 We're trying to eliminate issues for your Honor. We
11 took their methodology to do some math. We really want to not
12 fight over things that don't need to be fought over. But this
13 is literally Dr. Ferrell's analysis.

14 MR. SALANT: Your Honor, may I respond?

15 MR. NAFTALIS: It's just turned into dollars and
16 cents. They basically are doing the cross I did of Dr. Ferrell
17 against our witness, when all we are basically doing is using
18 their analysis.

19 We're happy to have them critique their own analysis,
20 but then they presented something to the jury that doesn't make
21 any sense.

22 So we just want to get to, sort of, what the issue is
23 as to how you calculate loss. And if there really are issues
24 that your Honor needs to decide, I would love to do that. But
25 I don't know if it's efficient to, sort of, critique Dr.

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Voetmann - cross

1 Ferrell through this witness, especially since we can't
2 cross-examine Dr. Ferrell because we're not producing him
3 again.

4 THE COURT: Mr. Jackson, do you wish to be heard?

5 MR. JACKSON: Thank you, your Honor. Yes.

6 I just want to point out this witness said yesterday
7 explicitly that he did not do an event study. And so the
8 question of his analysis is not the question of the validity of
9 event studies; it's the question of what exactly he did. And
10 the event study is the baseline upon which we all agree.

11 THE COURT: He's not being asked about what he did
12 now. What he's being asked about is whether he's familiar with
13 whether what he did has ever been presented to a court before.
14 Those are the questions that we've been hearing over the last
15 few minutes.

16 MR. JACKSON: Exactly, your Honor.

17 I think that that's a very separate inquiry from the
18 inquiry about whether what Professor Ferrell did is valid.
19 That goes to the core of what we're supposed to be determining
20 today.

21 THE COURT: All right.

22 Well, my advice would be if you could craft your
23 questions more so that they focus on what this witness did so
24 that we don't have a dispute about whether you're
25 cross-examining him about something that Professor Ferrell did,

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1 because that seems to be the point of dispute between the
2 parties. So I think if your questions are crafted so that it's
3 perhaps clearer that you're asking him about things that he
4 did, maybe we can avoid the dispute. That would be my advice.

5 MR. SALANT: Thank you, your Honor.

6 BY MR. SALANT:

7 Q. Dr. Voetmann, I'll try and tie this issue up in one
8 question: The math that you did to estimate loss amount that
9 you present in your report, have you ever seen another report
10 in a market manipulation case using the method that you used
11 here?

12 A. I'll try to answer that in two steps.

13 One, I have not done a stock manipulation case myself
14 as a witness in terms of being on the stand calculating the
15 loss amount. I have worked on manipulation cases over the
16 years.

17 But secondly, I have seen the idea that you are trying
18 to isolate what is the factor that drives a stock price up or
19 down. And as Dr. Ferrell stated, aside from stock
20 manipulation, there are three other factors: Industry, market,
21 and firm-specific. And so he's pointing to four factors.

22 In my analysis, what I did was controlling for three
23 of those four, leaving a fourth left, and there is a plausible
24 causal effect there that that could be stock manipulation.

25 Q. And following that, you took a three-step process where you

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Voetmann - cross

1 took Professor Ferrell's results, you applied Maiden's share of
2 buy volume, and you multiplied by the total number of shares
3 outstanding. That was a step you took in your analysis.

4 A. Those are the three steps: The residual; the portion of
5 Maiden Capital; and then, in addition to that, I adjusted for
6 whether or not there was confounding information to
7 firm-specific.

8 Q. So that is my question. Those three steps and the steps
9 you describe, have you ever seen them taken before to estimate
10 loss in a market manipulation case?

11 A. I'll answer again. So I have worked on market manipulation
12 cases, and I worked on many securities class actions. And this
13 particular step we just talked about is a very common procedure
14 you use when you are evaluating the impact on potential
15 misrepresentations or omission of information in class actions.
16 So those steps are very similar. I think it's a very generally
17 accepted methodology in steps you take when you're examining
18 the impact on a security from such information. You're trying
19 to isolate the factor that might drive that security.

20 And similar to that here, as Dr. Ferrell and I agree
21 on, you have the -- aside from stock manipulation, known
22 conspiracy scheme, you have the market industry and
23 firm-specific. And I adjusted for those three, leaving out --
24 left with what potentially could be the manipulation.

25 Q. All right. Thank you.

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Voetmann - cross

1 Dr. Voetmann, yesterday you testified that you were
2 not personally paid by the government for your testimony in
3 this case, but your firm was.

4 A. That's correct.

5 Q. How much is your firm being paid for its engagement in this
6 case?

7 A. Well, Brattle, as most consulting firms, we bill by the
8 hour. So depending upon how many hours we have worked on the
9 case, that's how much we have been paid.

10 Sitting here today, I don't know how many hours I
11 actually put in on the case. It's been going on for almost a
12 year now.

13 Q. What is your hourly rate?

14 A. 675.

15 Q. Are others from your firm working on this case?

16 A. I had some analysts helping me out, putting some charts
17 together and helping me review some of the reports, the news
18 articles.

19 Q. And do you have a sense of how much your firm has invoiced
20 in this case?

21 A. So I actually do not. One of my colleagues on the case is
22 handling the invoices with the government, so I actually have
23 not seen the invoice. I know how much time I spend on it, but
24 I don't know how much time the team has spent.

25 Q. You're a partner in your firm, a principal, you said?

J42VTUZ1

Voetmann - cross

1 A. That's right.

2 Q. You receive some portion of residual profits?

3 A. That's correct.

4 Q. And so some share of what the government pays your firm in
5 this case goes to the firm's bottom line, right?

6 A. I would assume so, assuming there's a profit out of this
7 case, yes.

8 Q. And that would go to your bottom line, right?

9 A. Well, yes, I would -- it's in one general pool from all
10 cases that the firm works on. And as a partner, I get a share
11 of that pool.

12 Q. Dr. Voetmann, are you aware that as of December 31st, 2008,
13 the first day of the period you studied, KIT Digital's market
14 capitalization was just above \$17 million?

15 A. Yes.

16 Q. Do you have an understanding of the term micro-cap stock?

17 A. I do.

18 Q. Do you understand that a micro-cap stock is a stock with a
19 market cap between 50 and \$300 million?

20 A. Generally, that's in that range.

21 Q. So KIT Digital at the time of the beginning of your study
22 was smaller than a micro-cap stock?

23 A. Yes, it was very small at the time.

24 Q. Some people call this a nano-cap stock, right?

25 A. I'll take your word for it.

J42VTUZ1

Voetmann - cross

1 Q. Trading dynamics are different for nano and micro-cap
2 stocks than for large-cap stocks, right?

3 MR. NAFTALIS: Objection, your Honor.

4 THE COURT: Grounds.

5 MR. NAFTALIS: They put forward an event study of KIT
6 Digital, a "nano-cap." And now they are impeaching the fact
7 that there was an event study of a nano-cap.

8 I just don't know what the point of their cross is at
9 this point.

10 There obviously are issues we can disagree on, but
11 critiquing whether this is a proper methodology has, sort of --
12 that happened a year and-a-half ago. Whether an event study
13 can study nano-caps, that came in at trial. We've adopted
14 their methodology to try to help your Honor reach a reasonable
15 estimate of loss. But if we're going to go through whether
16 event studies can properly be used with this type of a firm --
17 Dr. Ferrell says you should use event studies, and then we take
18 his event study and reach a conclusion.

19 So, again, we're happy to be here for whatever your
20 Honor wants; we just don't understand what the cross is
21 supposed to do.

22 MR. SALANT: May I respond, your Honor?

23 THE COURT: Yes.

24 MR. SALANT: This line of cross-examination is not
25 intended to impeach or evaluate the event study in any way; it

J42VTUZ1

Voetmann - cross

1 is to examine the steps that Dr. Voetmann took with the results
2 of the event study in order to calculate loss amount, which was
3 not within the scope of Professor Ferrell's event study.

4 There are similar concepts at play, but this is
5 intended as a different line of cross-examination.

6 THE COURT: That may be. But I will say that the
7 question that drew the objection seemed -- it seemed to be
8 raising doubt about whether -- I mean maybe I misinterpreted
9 the question, but it seemed to me that it was intended to
10 suggest that an event study of the sort that was done here
11 couldn't properly be done on a nano -- a micro-cap or nano-cap
12 type stock. Maybe I misunderstood what you were getting at.

13 MR. SALANT: It certainly wasn't intended that way,
14 your Honor.

15 THE COURT: Okay.

16 I'm going to overrule the objection.

17 You can proceed.

18 BY MR. SALANT:

19 Q. Dr. Voetmann, are you aware that KIT Digital stock was
20 first listed on the NASDAQ global market exchange in August
21 2009?

22 A. Yes.

23 Q. Prior to that, it was listed on the NASDAQ OTC bulletin
24 board, right?

25 A. Yes.

J42VTUZ1

Voetmann - cross

1 Q. On balance, stocks that are not listed on national or
2 listed exchanges are less liquid than those listed on
3 exchanges?

4 A. As a general matter, there's a reason why they are listed
5 OTC. They may or may not trade as frequently as larger stocks.
6 But there are certainly situations where even small-cap have
7 the general interest of the market and they trade frequently on
8 an OTC. So it really depends on the security you're looking
9 at.

10 Q. And just to define our terms, in this context "liquidity"
11 means whether the stock could be easily traded?

12 A. As a general definition, that's often what we refer to.

13 Q. Do you know how liquid or illiquid KIT Digital stock was
14 prior to it being listed on the NASDAQ in August 2009?

15 A. It's not part of what I examined. What I did exam was the
16 level of volume of trades that occur through the entire
17 conspiracy period.

18 Q. And having done so, did you reach any conclusions as to
19 whether KIT Digital stock was liquid or illiquid?

20 A. Well --

21 MR. NAFTALIS: Objection to form.

22 THE COURT: Sustained.

23 Q. Dr. Voetmann, I'll try and make this portion very brief.

24 In your report, did you do any analysis to determine
25 if the market for KIT Digital was efficient while it was

J42VTUZ1

Voetmann - cross

1 trading over the counter?

2 A. The general assumption of applying an event study is that
3 the market is deficient. So I followed the guidelines from Dr.
4 Ferrell as he implemented his event study. I tested his event
5 study, I replicated his event study. So that's the extent I
6 was comfortable using his event study.

7 Q. And you took no steps beyond that?

8 A. I did not.

9 Q. Earlier we discussed that your firm was retained by the
10 government in this case to assist the Court in determining the
11 approximate loss amount to third-party investors in KIT
12 Digital. Do you recall that?

13 A. Yes.

14 Q. By "third-party investors," you meant investors who are not
15 defendants in this case, right?

16 A. I believe that's a fair statement.

17 Q. You testified yesterday that your analysis was confined to
18 trading by an entity called Maiden Capital.

19 A. Yes.

20 Q. In your report, you did not study trading activity in KIT
21 Digital stock by any other person.

22 A. So I believe I wrote in my report that it's Maiden and
23 Saxon and then combined those two, what we refer to as Maiden
24 Capital.

25 Q. And other than those two entities, you did not study

J42VTUZ1

Voetmann - cross

1 trading by any other particular person?

2 A. I did not.

3 Q. So you did not consider when other third parties bought or
4 sold KIT Digital?

5 A. No, in the sense that I focused on what trades did Maiden
6 Capital make where they benefited from the trades, which their
7 trades obviously would have been with a third-party investor.

8 Q. That's a fair point.

9 You did not identify any third-party shareholders
10 trading in KIT Digital at all?

11 A. As a general matter, when you're looking at volume and
12 securities, the data you have access to, the data that Dr.
13 Ferrell and I both used from Bloomberg, you don't get the
14 identifier of the third-party investors, you get aggregate
15 volumes. So therefore, no, I would not know the entity of
16 those additional investors.

17 Q. And so therefore your report does not identify any person
18 who lost any money trading KIT Digital, right?

19 A. Well, no, not a specific name of an individual investor.

20 What my analysis does, the test I did to see if the
21 government's calculation was reasonable, comes up with an
22 amount, a range, that had KIT Digital not traded or had they
23 not engaged in the alleged conspiracy scheme, those investors,
24 had they not sold to KIT Digital, they could have gained those
25 returns that KIT Digital or Maiden Capital now earned.

J42VTUZ1

Voetmann - cross

1 Q. You did not identify any party who lost any money in KIT
2 Digital in your report, did you?

3 A. I identified the amount of potential losses that a
4 third-party investor could have earned, but not the name of who
5 that third-party investor could be.

6 Q. Are you aware that Stephen Maiden bought many shares of KIT
7 Digital between December 2008 and September 2011?

8 A. I believe this came up in Dr. Ferrell's transcript I read,
9 if I remember correctly.

10 Q. Stephen Maiden or his entities bought millions of shares of
11 KIT Digital, right?

12 A. I'm aware of that, yes.

13 Q. That would mean that Maiden himself was a purchaser of
14 stock at inflated prices, right?

15 A. Well, so I have to understand. I need to look at my data.
16 If the volume identified by Dr. Ferrell as Maiden Capital data
17 did not include Stephen Maiden's volume as well.

18 Q. Under your analysis, Maiden Capital or his entities were
19 purchasers of stock during the inflation period?

20 A. Conspiracy period, yes.

21 Q. Did you take any steps to remove Maiden or his entities'
22 share of losses from your loss estimate?

23 MR. NAFTALIS: I hate to interrupt.

24 Are we talking about Stephen Maiden individually or
25 are we just using Maiden interchangeably with Maiden Capital?

J42VTUZ1

Voetmann - cross

1 THE COURT: I think there's some confusion between the
2 questioner and the witness. Because the witness, I believe, is
3 endeavoring to separate Maiden Capital from Maiden as an
4 individual, and I'm not sure your questions are acknowledging
5 that distinction.

6 So if you could, in your questioning, focus or make a
7 distinction between Maiden Capital and Maiden as an individual,
8 that would be helpful.

9 MR. SALANT: Yes, your Honor.

10 BY MR. SALANT:

11 Q. Dr. Voetmann, did you take any steps to remove Maiden
12 Capital's share of the losses from your loss amount estimate?

13 A. I'm not sure I follow. You said Maiden Capital shares?

14 Q. Maiden Capital's share of the losses.

15 A. I calculated the overall losses or I tested the overall
16 losses the government calculated, focusing entirely on the
17 aggregate Maiden Capital volume that was produced and presented
18 to me by Dr. Ferrell.

19 MR. JACKSON: Excuse me, your Honor. I can't hear the
20 witness. Could we ask him to repeat the answer? Maybe just
21 move slightly closer to the microphone.

22 THE COURT: Yes. Can you answer that question again?
23 Do you need it read back or do you want to hear it again?

24 THE WITNESS: I think I'm good.

25 THE COURT: Okay.

J42VTUZ1

Voetmann - cross

1 A. So again, in my analysis, the materials I had access to
2 included spreadsheets from Dr. Ferrell that listed all the
3 Maiden Capital volumes. And so for the purpose of my analysis,
4 I incorporated and included all the Maiden Capital volume of
5 shares, and that's the basis for the loss calculation, the test
6 of the government's calculation, that I did.

7 (Continued on next page)

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J423TUZ2

Voetmann - Cross

1 BY MR. SALANT:

2 Q. The step you took in your analysis was to multiply the
3 daily residual by the total number of shares outstanding,
4 right?

5 A. Well --

6 Q. That was one step you took in your analysis?

7 A. That's the second step in my three steps. The first step
8 is the residual itself. The second step is figuring out, okay,
9 what is the value on a given day of that residual, depending on
10 how many shares are outstanding. And then the third step is
11 what we're talking about here, I took the Maiden Capital volume
12 relative to the total buy volume on a given day.

13 Q. In the second step where you multiply by all shares
14 outstanding, did you remove any shares that were held by Maiden
15 Capital?

16 A. These are reported shares outstanding by Bloomberg, so
17 that's the number I took. I did not take any further
18 adjustment to those shares. In the typical case, the report of
19 shares outstanding would reflect all shares outstanding held by
20 everyone in that security.

21 Q. Are you aware that during the conspiracy period you
22 studied, Kaleil Isaza Tuzman and his investment entities were
23 the largest shareholders in KIT Digital?

24 A. I don't recall if I saw that. That's -- I may have read
25 that.

J423TUZ2

Voetmann - Cross

1 Q. Are you aware that the public -- the company publicly
2 disclosed that as of December 31, 2008, the first day in your
3 conspiracy period, Kaleil and his investment entities held
4 57.82 percent of the company's total outstanding shares?

5 A. I'm not aware of that, but I know they traded 61 percent of
6 the shares that day.

7 Q. Are you aware that on August 18, 2009, an entity controlled
8 by Kaleil purchased an additional \$4 million worth of KIT
9 Digital common stock?

10 A. It is not part of the test I did, so I am not aware.

11 Q. Are you aware that Kaleil or his entities made further
12 purchases of KIT Digital common stock during the conspiracy
13 period you studied?

14 A. Only to the extent they are part of the Maiden Capital
15 volume. I am not aware of other trades they may have outside
16 of Maiden Capital.

17 Q. Assuming that these trades actually did happen, would you
18 agree that Kaleil Isaza Tuzman was a large shareholder of KIT
19 Digital stock in the period of December 31, 2008 to
20 September 15, 2011?

21 MR. NAFTALIS: Objection to form.

22 THE COURT: Sustained.

23 MR. NAFTALIS: Also foundation on a lot of this.

24 THE COURT: Well, I've sustained the objection as to
25 form. So, if you want to continue, you'll need to change the

J423TUZ2

Voetmann - Cross

1 form of the question. And then depending on the question, I'll
2 decide whether there is adequate foundation or not.

3 Q. Dr. Voetmann, in your report you make numerous references
4 to the PSR. Do you recall that?

5 A. The presentencing report, yes.

6 Q. The PSR in this case calculated a loss amount for Count
7 Four of between 11.5 and 25.2 million, right?

8 A. That's correct.

9 Q. Yesterday you were asked if you felt the government's
10 result was reasonable. Do you remember that?

11 A. Yes.

12 Q. You were not asked if you reviewed the government's
13 methodology in reaching that result, were you?

14 A. Can you repeat that question?

15 Q. You were not asked whether you agreed with the methodology
16 used to reach that result.

17 A. I was not asked that. I did observe, though, that in
18 Dr. Ferrell's concerns with the government's calculation, he
19 did not state that he was concerned with their methodology for
20 calculating it, other than he had concerns about the
21 adjustments that needed to be made.

22 Q. Do you recall when you were engaged by the government,
23 before or after April 27 of 2018?

24 A. I don't have the exact date, but I believe it was after.

25 Q. Did you review the methodology used to calculate loss in

J423TUZ2

Voetmann - Cross

1 the PSRs?

2 A. I read the PSR. To that extent, I reviewed it.

3 Q. So, you would agree that what the PSR is doing is taking
4 the total change in KIT Digital's market cap, and multiplying
5 it by Maiden's share of volume. Two steps?

6 A. I don't have the PSR in front of me, but I thought there
7 was a third step that they also mitigated by looking at the
8 90-day period afterwards. To the extent that the price went up
9 as we saw in the chart earlier.

10 Q. As an econometrist, do you endorse the method employed by
11 the PSR?

12 A. I wasn't asked to endorse it. But the concept of looking
13 at how much a market cap change happened over time, that's a
14 common calculation in terms of finance. So in that sense, it's
15 a common methodology to calculate how much the value of a
16 company changed from one year to the next.

17 Q. So as a professional, you endorse the method that is
18 advanced in the PSR or not?

19 A. I don't think that's what I said. I said that the concept,
20 the principle of looking at how much does the value of a
21 company change from one date to another, as the government
22 calculated the increase in market cap from December 2008 to
23 September 2011, that's a common calculation one might study,
24 and to apply a proportionate to a certain volume, that's also
25 not an uncommon calculation.

J423TUZ2

Voetmann - Cross

1 But I'm not suggesting that I'm advancing the
2 methodology. I was more asked to, I was asked to see if I did
3 some tests addressing the concerns by Ferrell, would I agree
4 that the amount they calculated was reasonable.

5 MR. NAFTALIS: If we're going to continue this line, I
6 wanted to object.

7 MR. SALANT: I don't have anymore questions on it.

8 MR. NAFTALIS: Just to put it on the record. The
9 general chronology is there was a PSR, the defendant said
10 that's not good enough. Ferrell puts in a report that says
11 that's how to do it. We do it. Impeaching the PSR, I am not
12 sure why that's relevant, and if we're going to go back to
13 those issues.

14 THE COURT: He just said you don't have anymore
15 questions on that one, right?

16 MR. SALANT: No, your Honor.

17 THE COURT: Go ahead.

18 Q. Let's please look at the chart on page 12 of your report
19 you presented to this court. I believe it's marked as
20 Government Exhibit V1, and I'm looking at page 12. This is
21 that chart; is that right?

22 A. That's correct. This is the chart that's in the report
23 itself.

24 Q. So you've estimated a loss amount range of 10.4 million to
25 82 million, right?

J423TUZ2

Voetmann - Cross

1 A. That's correct.

2 Q. That's quite a large range.

3 A. It is quite a large range.

4 Q. Let's start with your highest estimate of 82 million. You
5 do not actually believe this to be a precise measure of the
6 loss calculated by Maiden's trading, do you?

7 A. I believe I said yesterday that it's the high end, but in
8 this calculation, I did not account for the company specific
9 information. And so, if you were to account for that, it may
10 reduce that 82 downward.

11 Q. I'd like to focus on a different issue. Yesterday you
12 testified that your two high estimates of 82 and 68 million
13 were calculated without regard to the statistical significance
14 of daily residuals. Do you recall that?

15 A. I do.

16 Q. I'd like to break down exactly what that means. Yesterday,
17 you explained what the daily residuals were. You also
18 explained how T statistics are calculated to assess whether
19 residuals for given trading are statistically significant.
20 This is Professor Ferrell's data upon which you rely, right?

21 A. I don't think I defined T statistic yesterday, but we
22 talked about the significance, sure.

23 Q. Statistical significance is an incredibly important concept
24 in econometrics, isn't it?

25 A. It is very important, yes.

J423TUZ2

Voetmann - Cross

1 Q. Statistical significance gets at the question of whether an
2 observed result is the product of chance or not, right?

3 A. It does address that. It addresses the question of whether
4 or not it's more likely than not that the information disclosed
5 to market caused the price change, if it is a statistical
6 significant price reaction. Which is why I introduced both the
7 high end test and the low end test.

8 Q. We're speaking just about your high end test right now.
9 So, would you agree that results that are found to be
10 statistically significant are results that are unlikely to be
11 due to chance?

12 A. That's the general definition, common language definition
13 of statistically significant.

14 Q. Another way people put it is that a statistically
15 significant result is statistically different from zero. Is
16 that fair?

17 A. I think that's fair. I mean, typically the definition is
18 that you're more likely than not that you can associate the
19 event that you're looking at, the factor you are looking at, to
20 have explained the price reaction. But there's still -- if
21 you're using 5 percent as your level of statistical
22 significance, there is still a 5 percent chance there is not
23 that factor.

24 Q. You say 5 percent, you are referring to the thresholds at
25 which statistical significance can be tested?

J423TUZ2

Voetmann - Cross

1 A. That's a common level of threshold we use in cases like
2 this.

3 Q. To the econometrician like you, a statistically significant
4 result is more meaningful than a result that is not
5 statistically significant.

6 A. I don't know I would agree with that. The question is what
7 are you analyzing and what are you examining.

8 So, in this case, we are examining all the trades by
9 Maiden Capital, and we are trying to assess whether or not
10 those trades might have impacted the security.

11 And so, you can have a residual that is, like, say
12 94 percent level of significance, so that would not qualify as
13 statistically significant, but nonetheless it's very close to
14 being statistically significant. In fact, there is different
15 levels that econometricians would use, 5 percent, 10 percent,
16 1 percent. So, it's not a bright line rule always that you
17 just cut off at 5.

18 So, that's why, when I examined the first row here, I
19 wanted to get a sense for if you are considering the conspiracy
20 scheme as the manipulation of the stock, and so each time they
21 have an intent to manipulate the security, what would be the
22 impact, the maximum impact, if you included all those days.
23 That's what that \$82 million was.

24 Q. To be clear, the 82 and 68 are not ones that are 94 percent
25 in a 95 test. They are done without regard to statistical

J423TUZ2

Voetmann - Cross

1 significance at all.

2 A. These are all the days where there is a positive residual.
3 Correct.

4 Q. You've written many articles in peer-reviewed journals,
5 right?

6 A. I have.

7 Q. Those articles you always report on the statistical
8 significance of your results, right? We have them. We can
9 look at them if you'd like.

10 A. I think I use two terms. I use statistically significant
11 and at time we also refer to marginal significance. Marginal
12 significance is something that's close to being statistically
13 significant.

14 Q. Marginal significance makes no appearance in your report
15 today?

16 A. That's right. Statistically significant does. That's why
17 I did the high end test and the low range, the scenario three
18 and four.

19 Q. So to be clear, your 82 and \$68 million estimates were
20 calculated without regard to the statistical significance of
21 the daily results.

22 A. This is -- yes, this is looking at all the days where there
23 was a positive residual. In the first instance, the first row,
24 I did not account for the third factor that Dr. Ferrell
25 suggested I should, which is the confounding information. So

J423TUZ2

Voetmann - cross

1 in that sense, we are taking every day as a potential for the
2 conspiracy scheme to work.

3 In the second row, here, I did the test or went
4 through potential confounding information, and to be
5 conservative, any day where there might have been confounding
6 information, I excluded those days and that's where we reduced
7 it to 68.2. That was my first two tests of the high end of the
8 conspiracy schemes, manipulation of the stock if you are
9 counting every day they engaged in trading.

10 Q. Understood. And so, if we were to confine our attention to
11 only statistically significant daily results, we would have to
12 eliminate your first and second estimates?

13 A. If the Court finds that that's the only days that matters
14 for manipulation, then you would focus on row three and four.

15 Q. That's 15 and 10 million?

16 A. That's correct.

17 MR. SALANT: Your Honor, my speaking time has come to
18 an end. I would like to tender the witness with your
19 permission.

20 THE COURT: Yes. Mr. Weitzman.

21 MR. SALANT: Thanks.

22 THE WITNESS: Thank you.

23 CROSS-EXAMINATION

24 BY MR. WEITZMAN:

25 Q. My colleague just focused on the first and second of the

J423TUZ2

Voetmann - cross

1 high-end loss amount you calculated, the 82 and \$68 million. I
2 am going to stay on that just for a moment.

3 In addition to neither of those high end loss
4 estimates incorporated as statistical significance analysis, I
5 think you were about to testify that neither of them actually
6 incorporate -- the first one didn't incorporate an analysis of
7 confounding news, correct?

8 A. That's correct. Can I correct one thing you just said?

9 Q. Yes.

10 A. In one and two, all the days that I included in three and
11 four are also included. So to that extent, the statistically
12 significant days I included in one and two.

13 Q. But it doesn't exclude non-statistically significant days
14 in number one and number two?

15 A. That's correct.

16 Q. Number one doesn't exclude days on which there are
17 confounding news, correct?

18 A. That's correct.

19 Q. Let's talk about --

20 THE COURT: I'm confused. So, I thought it was one
21 that did not exclude confounding news, but two did. Maybe I'm
22 confused.

23 THE WITNESS: So one does not exclude confounding
24 news, but the second row you see N confounding news, that means
25 I excluded confounding events. So any day where there might

J423TUZ2

Voetmann - cross

1 have been confounding news, I just gave the benefit of the
2 doubt to be conservative, I removed all those days.

3 MR. WEITZMAN: I thought I asked him only about the
4 first line. If I didn't, I apologize.

5 Q. Sir, you wrote an article in -- let me just put it on the
6 screen. I'm going to mark this as Exhibit F111, Defendant's
7 F111.

8 Do you recognize this article by the Brattle Group
9 called "Correct Application of Event Studies in Securities
10 Litigation"?

11 A. Yes, I wrote this and I believe you can refer to it as a
12 marketing article. I think more of a short article.

13 Q. You tried to be as accurate as possible in your marketing
14 pieces?

15 A. I do, of course.

16 Q. It incorporates your expertise about event studies,
17 correct?

18 A. Of course.

19 MR. WEITZMAN: We offer Defendant's Exhibit F111.

20 THE COURT: Any objection?

21 MR. NAFTALIS: No, your Honor.

22 THE COURT: F111 is received.

23 (Defendant's Exhibit F111 received in evidence)

24 Q. Turning to page four of F111, I'm sorry, page five, the
25 highlighted portion states "Traditional event studies enable

J423TUZ2

Voetmann - cross

1 experts to disentangle fraud from non-fraud related information
2 on disclosure days using daily returns, failing to distinguish
3 the fraud versus non-fraud causes of price decline is a
4 critical error. This becomes even more difficult where there
5 are multiple confounding disclosures on the same day. Courts
6 have recognized the possibility of studying intraday returns
7 when this is the case."

8 Do you see that?

9 MR. NAFTALIS: Objection, relevance. Again they are
10 impeaching their own witness.

11 MR. WEITZMAN: Your Honor, this is a false criticism
12 and I'm -- it's really a false record that's being created by
13 what Dr. Ferrell did. He didn't look at confounding news, and
14 that was their criticism of him. That was their
15 cross-examination of him. There was no analysis of loss amount
16 by Dr. Ferrell.

17 MR. NAFTALIS: Our point is they put forward a
18 methodology which they put to the jury, and now they are saying
19 it's not right.

20 THE COURT: I understand that point, which you've made
21 about six times. But it really I think would just be more
22 efficient to allow them to ask their questions, create the
23 record they want, and then I will rule. I have absorbed the
24 fact that you believe that they're now criticizing what
25 Dr. Ferrell did. I understand that.

J423TUZ2

Voetmann - cross

1 MR. NAFTALIS: I apologize, your Honor.

2 THE COURT: You made your record. I would just like
3 to get through this and complete it and so we can move on to
4 other issues we have in the case.

5 MR. WEITZMAN: Thank you, your Honor.

6 Q. Do you agree with me, sir, that not excluding confounding
7 news from the very first line of this analysis, the \$82
8 million, is what you previously called a critical error?

9 A. Right. That's exactly why I included the second line.

10 Q. Fair enough. On the first line, that's subject to critical
11 errors, correct?

12 A. I'll pause there and answer that. Not entirely, because
13 the assumption in that first line is that the confounding news,
14 if you were to look at it, and if you had attempted to parse it
15 out, would not have had an impact. So it depends how you read
16 the confounding news on that line.

17 I would also state that the article you just
18 referenced, Dr. Ferrell, as I cite in my footnote nine of my
19 report, actually wrote an article in the Journal of Corporate
20 Law where he made that exact same distinction between fraud and
21 non-fraud news that you need to parse out. So I agree with
22 him.

23 Q. You agree that one must parse out the fraud elements of an
24 announcement from other non-fraud elements of the announcement,
25 right?

J423TUZ2

Voetmann - cross

1 A. Yes.

2 Q. Can you answer that question?

3 A. Yes. So you have to look at row one and two combined.

4 Q. Sir --

5 THE COURT: Let him finish his answer, please.

6 A. So in this case, as I wrote in my report, I did not attempt
7 to parse out the confounding news. So instead I wanted to look
8 at the two extremes, one if you assumed you didn't have to
9 parse anything out, and one if you assumed you excluded
10 everything that could be confounding. So you're getting an
11 interval where a damages would be in that range. So had I
12 attempted to parse it out as I wrote in that article, I would
13 be somewhere in between 82 and 68.2.

14 Q. Just to understand what confounding news is in your
15 definition. Confounding news is the fraud related information
16 in a disclosure versus the non-fraud related information,
17 correct?

18 A. It's -- that's the definition written here. It is parsing
19 out what could be attributable to something that may not be --
20 that may be non-fraud.

21 But again, I think the answer still stands that you
22 have to look at those two ranges. I did not engage in the
23 exercise of parsing it out. Instead, I gave the Court the
24 range, and explained that if you attempted to parse it out and
25 you went through every single day and attempted to parse it

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Voetmann - cross

1 out, you would get somewhere in between these two numbers.

2 Q. Focusing on the first, so we understand what that is. It
3 doesn't, this \$82 million doesn't exclude non-statistically
4 significant events, correct, or results?

5 A. It includes the statistical significant events and the
6 non-statistical significant events.

7 Q. And the first line, 82 million, doesn't exclude days on
8 which there was confounding news?

9 A. That's correct.

10 Q. The second day and the fourth day do purport to exclude
11 days with confounding news, correct?

12 THE COURT: The second day and the fourth day?

13 Q. Sorry the second line and the fourth line with the \$68
14 million and \$10 million results?

15 A. Yes.

16 Q. Those purport to exclude days on which there were
17 confounding news, correct?

18 A. So you see the words non-confounding news, that's why those
19 two lines I was conservative, and any identified day where
20 there might be confounding news, I excluded those days
21 entirely. I did not attempt to parse anything out.

22 Q. Just for the sake of brevity, I am really not trying to cut
23 you off, but we do have limited time. If possible, if you can
24 answer my question yes or no, can you try?

25 A. If it's a yes or no question, I'll try to answer yes or no.

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1 THE COURT: But if it is not a yes or no question, you
2 should not feel limited.

3 THE WITNESS: Thank you.

4 THE COURT: We have no jury here. It's more important
5 that I understand his opinion in its complexity, and so, I
6 don't want the witness to feel inhibited. If you are presented
7 with a yes or no question, obviously you should try to answer
8 it yes or no. But if you believe that the question cannot
9 fairly be responded to in a yes or no fashion, you are welcome
10 to indicate that.

11 THE WITNESS: Thank you.

12 MR. WEITZMAN: Thank you, your Honor.

13 Q. Did you, in order to analyze whether news were confounding
14 or not, did you review all of the articles yourself on Factiva?

15 A. Not on Factiva. But certainly the articles I reviewed, the
16 majority of articles that was identified on the KIT Digital
17 which was just a subset of Factiva of 866 articles.

18 Q. How did you choose what subset of the 800 Factiva articles
19 that you downloaded that you would review?

20 A. So I worked with my team that I mentioned earlier, and we
21 discussed how to review those articles. And so with that, we
22 worked our way through all 866 articles as a joint effort.

23 Q. How many articles did you personally review?

24 A. Hundreds. I looked at the ones that was critical, the ones
25 that someone was not sure how to interpret, they would bring

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1 that to my attention, I would look at it.

2 Q. Otherwise you relied on the team, if they didn't bring it
3 up to you?

4 A. It is a very good team, so yes.

5 Q. Did you review the company's prior annual and quarterly
6 reports to determine whether there was confounding news?

7 A. Well, to the extent that they certainly in the articles
8 that came up on Factiva includes press releases, surrounding
9 their annual and quarterly reports. So to the extent that's
10 what you're referring to, I read those.

11 Q. Other than press releases that are picked up in Factiva, is
12 it fair to say you did not separately review yourself the
13 company's quarterly and annual filings with the SEC?

14 A. Yes, all of them came up.

15 Q. Did you review the company's form 4 filings with the SEC?

16 A. They, again, Factiva picks up on all sorts of news, and
17 they picked up when you're offering securities and when
18 companies file forms. So to the extent it came up there, I
19 would have reviewed it.

20 Q. If it wasn't picked up in Factiva, you did not review it?

21 A. I did not.

22 Q. Did you review research analyst reports published about KIT
23 Digital?

24 A. In fact, yes. I noted that there was about 10 reports from
25 non-major investment banks, and so, they didn't seem to have

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1 any new information other than what was in the Factiva
2 searches, so I didn't rely on those.

3 Q. So your recollection is that you reviewed about 10 analyst
4 reports about KIT Digital?

5 A. It's my recollection it was about 10 reports that during
6 the 2008 and 2011 time period, that came out that you could
7 purchase from Thomson and none of them were from investment
8 banks to my recollection. They didn't provide any additional
9 news, is other than what's already provided to me by Factiva.

10 Q. I'm handing you what's been marked as Government Exhibit
11 3302, 3304, and 3305.

12 MR. WEITZMAN: For the record, these are research
13 analyst reports in the dozens, maybe hundreds, published by KIT
14 Digital that the government produced in discovery. Can I ask
15 Mr. Naftalis to hand them up to the witness.

16 Q. I'm just going to ask you a simple question, sir. Did the
17 government provide you a copy of those exhibits of research
18 analyst reports published by KIT Digital?

19 A. No, they did not.

20 Q. So the research analyst reports that you reviewed, were
21 those the ones that you were able to find in your Factiva data
22 set?

23 A. That's correct.

24 Q. Other than the Factiva data set, you did not review
25 research analyst reports. Is that fair to say?

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1 A. That's correct.

2 Q. Is it fair to say that what I handed up to you amounts to
3 thousands of pages of research analyst reports?

4 A. Yes, although, I've seen this in many other securities
5 class action cases. The definition of what is a research
6 analyst report, among these reports you handed me are many
7 reports that's written by a computer, that is not a person
8 analyst that actually wrote the report. It is just taking some
9 data and then running some numbers and spitting out a report.
10 So I would exclude all those, I would not personally consider
11 those research analyst reports. Like Thomson Reuters screen
12 events, that's not an analyst report, that's a conference call
13 transcript. So there is a lot of these reports that I would
14 have to look at to see if it in fact would be a research
15 analyst report.

16 Q. Okay. Fine. Other than some of the reports that are
17 computer spit out, you see a lot of research analyst reports
18 there in those exhibits that you never reviewed; is that fair
19 to say?

20 A. I see some that I have not reviewed. And --

21 Q. If you don't mind --

22 THE COURT: Please. Please do not interrupt him.

23 MR. WEITZMAN: I thought he was done, your Honor.

24 A. This first stack of three is also all after the period of
25 the conspiracy period. So I would exclude this whole stack.

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1 THE COURT: And that is 3302. So 3302 you don't think
2 is relevant because of the time period?

3 THE WITNESS: It is outside the conspiracy period.
4 And the third -- the second one appears to be within the time
5 period, and I again state that the majority of these reports
6 are not covered by actual analysts.

7 And the exhibit 33 -- this was Exhibit 3304, and 3305
8 also appears to be within the time period, and again, a lot of
9 them are not by actual equity analysts.

10 And finally, I would say as well, if you look at each
11 of the date of these reports, which I have not done, but if you
12 overlay that with Factiva news, it is not unlikely, although I
13 have not done it, but it is not unlikely that these days would
14 have been picked up in my confounding news analysis event
15 regardless.

16 Q. Sir, you are precise in your testimony, correct? It's
17 important to be precise in your testimony, right?

18 A. Yes.

19 Q. So let's turn to Government Exhibit 3302. You testified a
20 moment ago, perhaps too swiftly, saying none of the dates --

21 THE COURT: Please don't comment on his testimony.

22 MR. WEITZMAN: Yes.

23 Q. You testified a moment ago that none of the analyst reports
24 in Government Exhibit 3302 are during the conspiracy period you
25 looked at. Would you turn to page two, three, four, five, and

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1 six of the index?

2 A. You're correct. I spoke a little too swiftly. On the
3 second page -- the first page and the second page are outside.
4 So the first page and second page are reports in this stack are
5 outside, but under page three you start covering some of the
6 reports in the conspiracy period, so I apologize.

7 Q. Page three, four and five include analyst reports from
8 April 2011 through September 20, 2011, correct?

9 A. That's correct, I apologize. I only looked at the cover
10 page, not realizing it went on for four or five pages.

11 Q. We'll look at specific analyst reports in a moment. Let me
12 ask a few questions further about your methodology. I want to
13 be very clear I am not talking about Dr. Ferrell's methodology.
14 I am talking about what you did.

15 You examined, in order to calculate this loss amount,
16 you used the proportion of Maiden buy volume relative that
17 total market buy volume. That was part of your calculation,
18 correct?

19 A. That's correct.

20 Q. And your logic, if I understand it correctly, is that
21 Maiden's buying volume put upward pressure on the stock price
22 causing it to rise. Is that right?

23 A. That would be one reason.

24 Q. Did you do any analysis to determine whether Maiden's
25 trading actually caused the stock to rise?

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Voetmann - cross

1 A. Yes, in the extent that you're looking at residual returns
2 and you filter out any other factors, again, that Dr. Ferrell
3 pointed to, aside from market manipulation, market, industry,
4 and firm specific, so you're left with the plausible effect of
5 stock manipulation.

6 Q. And the only stock trading you looked at in the sense of
7 evaluated in your event study was Maiden's stock trade,
8 correct?

9 A. So I didn't quite follow the question.

10 Q. You only looked at Maiden's stock trading. That's all you
11 looked at.

12 A. I look at the proportion of Maiden Capital volume on each
13 day.

14 Q. You didn't examine whether Maiden's trading in that day
15 actually caused an increase in the stock price of KIT Digital,
16 correct?

17 A. I think I'll repeat the same answer as before. That the
18 concern raised by Ferrell is, asides from stock manipulation,
19 you need to factor out market, industry, and firm specific.
20 And so, my analysis is typical event study, I filtered out
21 market, industry, and stock specific, leaving with, as I agreed
22 with Dr. Ferrell, the potential of plausible explanation that
23 is the conspiracy scheme to manipulate the stock that caused
24 that additional residual.

25 Q. Sir, there are ways to determine to look at blue sheets and

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Voetmann - cross

1 look at actual stock trading that occurred on a particular day,
2 to determine if the trading pushes the stock price up?

3 THE COURT: I don't know what blue sheets are.

4 MR. WEITZMAN: Yes, your Honor.

5 Q. Do you know what blue sheets are, sir?

6 A. I worked with blue sheets before.

7 Q. Can you define blue sheets?

8 A. So you can get a record of all the intraday trades of the
9 all the individual traders on a given day. To the extent
10 that's what you are referring to. That part of it will help
11 you understand intraday when certain buy orders were submitted,
12 and if you have the date available to you, you can examine the
13 price response intraday.

14 Q. Did you do any analysis to see the price response each day
15 as a result of Maiden Capital's trading?

16 A. I did not examine any blue sheets.

17 Q. Are you aware that the government produced all the blue
18 sheets for KIT Digital in this case to the defense?

19 MR. NAFTALIS: Your Honor, I want to register another
20 objection. This was another line of cross we pursued with
21 Dr. Ferrell.

22 THE COURT: Okay. Overruled. Continue.

23 Q. Are you aware that the government produced blue sheets in
24 this case to the defense?

25 A. I'm not aware and I have not received the blue sheets.

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1 Q. So you've done no analysis to actually examine on an
2 intraday basis whether Maiden Capital's trading was pushing the
3 price of KIT Digital stock up, correct?

4 A. That's correct.

5 Q. And you did no analysis to determine who was the
6 counterparty on Maiden Capital's trading either, correct?

7 A. Since I didn't have the blue sheets, I would not have the
8 ability to do that.

9 Q. Did you request the blue sheets from the government?

10 A. I did not.

11 Q. Did you discuss the possibility of relying on blue sheets
12 to do such an examination?

13 A. I don't recall discussing that.

14 Q. One thing that your methodology doesn't do, let me reframe.
15 I apologize.

16 You look at Maiden's buy volume; is that fair to say?

17 A. Yes.

18 Q. You didn't look at Maiden's sell volume, correct?

19 A. No. I have access to all the sell volume as well and it is
20 part of the exhibits that Dr. Ferrell produced as well.

21 Q. You didn't discuss in your report Maiden's sell volume,
22 correct?

23 A. I did not.

24 Q. In fact, in tab C2 of your report, which is marked as
25 Exhibit C1, I'll put it on the screen, zoom in. There is a

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Voetmann - cross

1 column here that's marked column 11 and it says Maiden volume
2 share. Do you see that?

3 A. I do.

4 Q. When you're talking about volume share in that column, you
5 are actually only talking about the buy volume shares, correct?

6 A. That's correct. It is under the assumption of or because
7 that the conspiracy scheme was the intent of inflating the
8 stock, so I focused on that side of the trade.

9 Q. Are you aware, sir, that Maiden sold millions of shares of
10 KIT Digital stock?

11 A. I am.

12 Q. Are you aware -- let's put a precise number on it. Are you
13 aware that between December 31, 2008 and September 15, 2011,
14 Maiden sold 3.8 million shares of KIT Digital stock?

15 A. Sorry. I don't recall the exact number. I'm not sure if
16 you can repeat the question again.

17 Q. Sir, this is -- sorry. This is some of the data that
18 accompanied your report. Recognize this?

19 THE COURT: You need to indicate for the record.

20 MR. WEITZMAN: Defendant's Exhibit F112.

21 A. Yes. This is the printout of the data I received.

22 MR. WEITZMAN: For the record, we provided a copy of
23 this to the government last night. We offer Defendant's
24 Exhibit F112.

25 THE COURT: We have to indicate for the record what,

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1 as I said, what it is that we're looking at. What is Defense
2 Exhibit F112?

3 Do you recognize it?

4 THE WITNESS: Yes. Sorry.

5 THE COURT: Can you tell us what it is, please.

6 THE WITNESS: Yes. It is the data that provided the
7 information on the Maiden trading volume, both the buy volume,
8 sell volume, and total daily volume.

9 THE COURT: And you're offering 112?

10 MR. WEITZMAN: I am, your Honor.

11 THE COURT: Any objection?

12 MR. NAFTALIS: No, your Honor.

13 THE COURT: Defense Exhibit F112 is received.

14 (Defendant's Exhibit F112 received in evidence)

15 Q. Turning to the last page, for the record, we added at the
16 bottom and provided to the government in advance, we did an
17 Excel addition function. And this reflects that from
18 December 31, 2008 to September 15, 2011, the Maiden sell volume
19 was about 3.8 million shares. Do you see that, sir?

20 A. I see the number 3.825, yes.

21 Q. You made an assumption I think you said a moment ago that
22 the intent of the market manipulation scheme was to inflate the
23 price of the shares, correct?

24 A. That's what I understood from the materials I reviewed, the
25 PSR and the Ferrell report.

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Voetmann - cross

1 Q. Besides that assumption, that it was to inflate the price
2 of KIT Digital stock, you didn't conduct any examination to
3 determine what actual effect Maiden Capital had, between the
4 buy and sell activity, on the price of KIT Digital stock,
5 correct?

6 A. My analysis is only focused on the buy volume. I did have
7 a comment in my report that it is possible that Maiden might
8 have traded and the stock would have gone in the opposite
9 direction. But, other than that, I didn't focus specifically
10 on the sell side of it.

11 Q. What caused you to have a comment that Maiden's trading
12 might cause an effect in the opposite direction, meaning a
13 decline in the price of KIT Digital stock?

14 A. So again, I wanted to consider the possibility that you
15 could have a day where the price actually fell, but because of
16 the trades by Maiden Capital, it did not fall as much as it
17 would have otherwise. So it's even though there is a fall, you
18 can argue that Maiden Capital's trading mitigated the decline
19 in the value on that day. So that could be -- I did not
20 account for that as a way of thinking about how that would
21 affect any view of potential losses here to themselves or
22 others, but I just made that observation that that could also
23 be a possibility.

24 Q. Sir, you examined a residual return, correct?

25 A. That's correct.

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1 Q. A residual return is against a predictive return, correct?

2 A. That's the definition.

3 Q. So, there are, if one has a negative residual, that means
4 that the stock price declined against the predictive return,
5 correct?

6 A. The actual return was less than the predictive return
7 taking into account the market and industry effects.

8 Q. Are you aware, sir, that examining Maiden's buy and sell
9 activity results in a net negative actual return as compared to
10 the predictive return?

11 A. I'm not following your statement nor do I follow the
12 analysis you are describing.

13 Q. Let me work through it more slowly then, sir.

14 Would you agree there is a different economic impact
15 on the price of a stock if you're solely a buyer, as compared
16 to whether you are a buyer and a seller of that stock?

17 A. It really depends on the circumstances of the situation you
18 are examining.

19 Q. If one is a net seller of a stock on a given day, would you
20 agree with me that that will put downward pressure on the price
21 of the stock?

22 A. In this hypothetical, are you talking about one individual
23 or what's the framework for the -- could you give me more
24 framework for the question.

25 Q. Let's talk first in the instance of one individual. Is one

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Voetmann - cross

1 individual who is a net seller of the stock a likely inflater
2 of the stock price?

3 A. So again, that depends. You referred to blue sheets
4 earlier. This individual in your hypothetical, what comes to
5 mind could have been a net buyer in the early day of the trades
6 and then turned to be a net seller in the afternoon. So in
7 that sense you could both have inflation effects and a
8 deflation effect.

9 Q. So the buying activity can cause an inflation, and the
10 selling activity can cause a deflation. Is that your
11 testimony?

12 A. In this hypothetical, that could be one outcome.

13 Q. Okay. Did you review Maiden's testimony in connection with
14 your expert report?

15 A. Maiden's, I did not.

16 Q. Are you aware that Maiden has testified that he was a
17 terrible day trader who lost his clients a lot of money?

18 MR. NAFTALIS: Objection, foundation.

19 THE COURT: Sustained.

20 Q. Did you talk to the prosecutors about Maiden's testimony in
21 this case?

22 A. I don't recall talking about that.

23 Q. Was examining Maiden's trading patterns important to your
24 analysis in any way?

25 A. I don't think so. Because, again, you're looking at the

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1 effects on the buy side if you have a conspiracy scheme to
2 manipulate the stock to inflate the stock. Whether or not some
3 individual, despite maybe the conspiracy scheme, didn't come
4 out on top, maybe speaks more to their trading ability than it
5 talks about the scheme.

6 Q. Okay. So, let's get granular. I'm putting on the screen
7 Government Exhibit V1 which is your expert report and the data
8 behind it. I'm turning to page C5. Let's focus in particular
9 on November 16, 2009.

10 A. November 6 or November 16?

11 Q. November 16, wrong date. On November 16, sir, 2009, this
12 is -- do you recall that this is one of the 11 days that you
13 include within the \$10 million loss amount calculation?

14 A. I believe that's the case.

15 Q. You know that because it's in the fourth column, the final
16 column over here, where it says Maiden trading days no news and
17 significant price increase, correct?

18 A. Yes, it was part of Dr. Ferrell's Exhibit 3923.

19 Q. And the number .88, that's a reference to your attribution
20 of \$880,000 of loss amount on November 16, 2009, correct?

21 A. That's correct.

22 Q. Are you aware, sir, that Maiden bought approximately 5500
23 shares of stock on that day?

24 A. What I see in this chart here is that they traded
25 14 percent. It is hard to see without the column headings, but

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1 the fifth column from the right, Maiden Capital traded
2 14 percent of all the volume that day.

3 Q. When you say traded 14 percent of all the volume that day,
4 you're looking at his buy volume?

5 A. That's correct.

6 Q. Let's go to Maiden's trading for November 16, previously
7 marked Defense Exhibit F112. Let's turn to November 16 which
8 is page 16 of the document.

9 A. Second to last row?

10 Q. That's the wrong year. November 16, 2009 is page 10 of the
11 document. Do you see the trading volume for Maiden on
12 November 16, 2009?

13 A. I do.

14 Q. Do you see that Maiden on that date purchased 5500 shares
15 of stock?

16 A. Yes.

17 Q. And he sold over 10,000 shares of stock on that date,
18 correct?

19 A. Yes.

20 Q. So, fair to say that Maiden sold twice as many stock
21 almost, shares of stock, in KIT Digital, on November 16, 2009,
22 than he bought, correct?

23 A. That's right.

24 Q. You've done no analysis to determine how it could be that
25 Maiden's net selling activity could cause price inflation,

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1 correct?

2 A. So, again, the analysis here is to determine how the
3 conspiracy scheme to inflate the price, how that would work.
4 And here, this will be working with the buy volume, meaning
5 when they engaging in buying the shares.

6 So again, it's hard to say the net outcome of the
7 precision of buy and sell. But certainly we know that the buy
8 side of this trade, these two trades, would have likely or
9 potentially worked to inflate the price.

10 Q. When you say we know that the two buy volumes would likely
11 have a potential for inflating the price. What piece of
12 evidence are you relying on to determine that these purchases
13 inflated the price?

14 A. So --

15 Q. I'm sorry. If I can just modify my question. Other than
16 your event study, because I think you've told us about that.

17 Did you look at Maiden's -- I guess the question is
18 did you look at any, did Maiden ever testify he inflated the
19 stock?

20 THE COURT: He just said he didn't review Maiden's
21 testimony. So to ask him about Maiden's testimony seems
22 pointless.

23 Q. Are you aware of any documents that show that Maiden --
24 e-mails, for example, or text messages -- where Maiden said
25 that he is inflating the stock on November 16, 2009?

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1 THE COURT: Did you read e-mails and text messages?

2 THE WITNESS: I did not.

3 Q. Sir, let's turn to another day. June 10, 2010. Putting
4 back up Defendant's Exhibit -- I'm sorry. Government Exhibit
5 V1. That's page C8. Do you see the date June 10, 2010?

6 A. Yes.

7 Q. This is another day that you include in the \$10.4 million
8 loss amount, correct?

9 A. That's correct.

10 Q. On that day, are you aware what Maiden's buying activity
11 and sell activity was?

12 A. Well, as you can see, column 11 there it says zero. It's
13 because we cutting off the digits, but it would have been a
14 very small number of trades relative to the volume at that day.

15 Q. So, just so I understand. There is a loss amount in
16 count -- in your fourth column, the \$10.4 million, when you
17 attribute Maiden's volume share to a near zero percentage of
18 trading on that date. Is that correct?

19 A. That's correct. I proportionated it to their buy volume on
20 every single day when there was a positive residual.

21 Q. On that date, for example, it contributes to \$10,000 worth
22 of loss amount in your analysis?

23 A. Very small amount.

24 Q. Okay. And are you aware, sir -- let's put it up. I can
25 just show you. Show you Defendant's Exhibit F112, and if you

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1 can turn to page 14 of that, looking at June 10, 2010. This is
2 your trading data, correct, that you relied on?

3 A. The they provided to me, yes.

4 Q. Do you see that Maiden's buy volume on this date and
5 Maiden's sell volume are quite disproportionate, correct?

6 A. That's correct.

7 Q. Maiden bought only 300 shares on June 10, 2010, and sold
8 45,800 shares that day, correct?

9 A. That's correct.

10 Q. That's a 150-to-one ratio of sales to buys, right?

11 A. I haven't done the calculation.

12 Q. Okay. Fair enough. Even though he's a net seller to this
13 degree, you include in your analysis of the \$10.4 million that
14 he's artificially inflating the price of the stock and causing
15 a loss; is that fair to say?

16 A. That's correct. Can we stay on this page for one minute?
17 I'd like to give an answer to explain that.

18 So if you look at the four days, five days prior to
19 the day in question, you notice that he is an extensive buyer,
20 proportionally to sell. He bought a lot more shares than he
21 sold. On those five days, the price was not statistically
22 significant, but nonetheless, it's possible, if one were to go
23 down this path, you asked me earlier if you examined the blue
24 sheets. Based on all that pressure, buy volume pressure he did
25 leading up to the date you asked me about, that he has reached

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1 the price level where now he wanted to sell, and so you can see
2 that sell amount you have there, I haven't done the math, but
3 the 45,800, almost line up with the five days' prior purchases.

4 Q. You haven't examined the blue sheets to make that
5 determination, correct?

6 A. No, but you can observe what you see on the sheet you put
7 in front of me that there are a lot of pressure on the price
8 when we go with this analogy. You picking up a day that is
9 statistically significant, and it happened to be a day where
10 there is a posted price and he has a low buy because he's
11 offloading or selling shares purchased just shortly before
12 that.

13 Q. I think you testified earlier that the sell activity will
14 have a deflationary impact on the price, correct?

15 A. Well, you have to put this in context of all the shares, of
16 course, that day.

17 Q. I understand that. His selling activity is not going to
18 inflate the price on that day, correct?

19 A. That's correct. But what I'm arguing here is I'm trying to
20 explain to you the days leading up to the day where he decides
21 to sell, you have a net buy, and you have a large net buys in
22 those five days leading up, so it is possible in your
23 hypothetical, it is possible that would have led to a higher
24 price after those five days. And he now decides to sell, given
25 the price that it was at.

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1 Q. Sir, none of the five days prior were statistically
2 significant days that were included in your \$10 million
3 analysis, correct?

4 A. That's correct. But it was included in my earlier analysis
5 we talked about earlier, for this exact purpose, that I don't
6 know if the Court will decide that you need to have a
7 statistical day or not. But it's certainly the case here that
8 you have a lot of trades on days where there is positive
9 residuals, whether they're significant or not.

10 Q. In your analysis, you make an assumption that every trade
11 Maiden makes, every purchase he makes, is with a market -- part
12 of a market manipulation scheme, correct?

13 A. That's how I understand the conspiracy scheme was meant to
14 be.

15 Q. That's the assumption you're making to make these
16 conclusions that you just talked about, right?

17 A. That's correct.

18 Q. If there are days on which Maiden is not engaging in
19 manipulative trading and he's just buying the stock, that
20 assumption would be incorrect, correct?

21 A. I have not made that distinction in my analysis. I am
22 assuming every day -- if there are days where they did not buy
23 but they sold, I did not include that in my analysis.

24 Q. You are making an assumption that every single share
25 purchased on every day by Maiden is part of a manipulation

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Voetmann - cross

1 scheme, but every share sold by Maiden is not part of a
2 manipulation scheme. Is that your testimony?

3 A. I don't think that's -- I wouldn't characterize it like
4 that. There may be there very well may be a connection. You
5 might have a scheme to inflate with the purpose of selling. To
6 capitalize on those sales so whether they're connected or not
7 in that sense, that's possible.

8 Q. Okay. You certainly don't analyze whether the sale
9 activity by Maiden caused any inflation or deflation of KIT
10 Digital stock, correct?

11 A. I did not include the sales, no.

12 Q. Are you aware that there are many days on which Maiden is a
13 net seller that you incorporated through your buy volume
14 column? Are you aware of that, sir?

15 A. You can just look at this table here. There are days where
16 there are net sellers, but again, the premise is, the activity
17 to run the conspiracy scheme was to manipulate the stock to
18 inflate the price. And that is typically done by buying the
19 security. It's possible that they wanted to capitalize on
20 that, and that's why they are net sellers after they bought
21 the -- pressured the price up.

22 In finance, it is common when you study day trading or
23 high frequency trading that people will come in and out on the
24 same day, and they will try to make a profit on those trades on
25 a single day. So they will buy and sell on the same day.

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1 That's not an uncommon practice.

2 Q. That's right. That's called day trading?

3 A. Day trading or high frequency trading or whatever phrase
4 you want to put on it.

5 Q. When you buy and sell trying to make money on intraday
6 trades, that's not necessarily manipulation; am I correct? In
7 your understanding of manipulation of a stock?

8 MR. NAFTALIS: Objection.

9 THE COURT: Sustained.

10 Q. Sir, as an economist do you view --

11 THE COURT: Is this really worthwhile? I just really
12 I have to ask whether this is worthwhile. We had a trial here.
13 We had a man testify that he was manipulating. So I'm just
14 wondering whether this is useful or not. If you believe it's
15 useful, by all means, proceed. But, you know, I want you to be
16 sure that this is useful that this is going to help me.

17 MR. WEITZMAN: I do think it calls into question the
18 methodological issues and assumptions made, but I think our
19 point can be made on the briefs.

20 THE COURT: I notice we are at 2:30. Maybe this a
21 good time for a break. So, let's take a break. And again,
22 when are you going to come on board, Mr. Jackson?

23 MR. JACKSON: What time is convenient?

24 MR. WEITZMAN: Can we talk?

25 THE COURT: So we'll take a recess.

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1 You can step down.

2 (Recess)

3 THE COURT: All right.

4 Mr. Jackson, are you taking over?

5 MR. JACKSON: Briefly, your Honor.

6 MR. WEITZMAN: Yes, your Honor. I'm shortening my
7 cross-examination. I hope to be done today, if I can get back
8 on by 3:45 or 4, although no assurances.

9 THE COURT: All right. Please proceed, Mr. Jackson.

10 MR. JACKSON: Thank you, your Honor.

11 CROSS-EXAMINATION

12 BY MR. JACKSON:

13 Q. Good afternoon, Dr. Voetmann.

14 A. Good afternoon.

15 Q. Dr. Voetmann, can I just start off by asking you -- I'm
16 going to try to make my questions as clear as possible, but I'd
17 like to respectfully ask if there's anything that I'm asking
18 that you don't understand or that you think phrases the
19 question in a way that you can't answer it, please let me know
20 and I'll attempt to rephrase, if that's okay.

21 A. Okay.

22 Q. So let me just start by asking you, one of the things that
23 you say in your report is that the U.S. Attorney's Office asked
24 you to do an analysis in the case to determine the approximate
25 loss to third-party investors in KIT Digital; correct?

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1 A. That's correct.

2 Q. At the time that that request was made of you, did the U.S.
3 Attorney's Office explain to you what the term "loss" meant in
4 the context of the analysis they were asking you to do?

5 A. I can't recall if we discussed the exact definition of
6 "loss." We talked about it in the context of loss, the way it
7 was described in the PSR, the presentencing report.

8 Q. Okay. So to be clear, you don't remember if there was a
9 specific conversation, but your recollection is that there was
10 some discussion about the concept of loss in the PSR?

11 A. That's correct. We discussed -- or I received their PSR
12 and we discussed specifically paragraph 151 to 154, which
13 describes the approximate loss that the government had
14 calculated.

15 Q. Now, in the academic literature around the question of
16 loss, the nature of the meaning of the term "loss" is itself
17 subject to discussion; correct?

18 A. I think that's a fair statement. Different academic
19 articles might define "loss" in a particular context
20 differently.

21 Q. Before you began your analysis that the U.S. Attorney's
22 Office asked you to do, did you come up with your own working
23 understanding of what definition of "loss" you were working
24 with in this case?

25 A. I think I -- yes, I came up with that understanding after I

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1 reviewed not only the PSR, but also the Dr. Ferrell report
2 raising some concerns about the loss calculation.

3 Q. So you did come up with your own working understanding
4 before you conducted your analysis after you looked at those
5 preliminary materials?

6 A. That's correct.

7 Q. Can you please give us what the working definition of
8 "loss" was that you proceeded under in conducting your
9 analysis?

10 A. The definition that I came up with and I applied here was
11 to calculate the impact that Maiden Capital trades,
12 proportional to all trades, would have had on the residual
13 returns after you adjust for market and industry and
14 company-specific information. So that's the definition I went
15 under.

16 Q. Now, just to be very clear, you said -- let me ask you
17 something before we unpack that for one second.

18 Is there any article or case or book or other
19 authority that you were using as a reference point for that
20 specific definition of "loss"?

21 A. I think there's multiple questions there, but if I answer
22 the first half, if I understood your question.

23 Q. Please. However is appropriate.

24 A. So I think there are a number of academic articles. I
25 can't recite all the academic articles. But there are academic

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1 articles, both in the financial community, finance community,
2 as well as in the law community. Dr. Ferrell had published a
3 couple of articles that specifically addressed the calculation
4 of loss or fraud-related loss which I cited in my footnote 9.

5 So to that extent, yes, I considered those or had
6 those in mind. I can't tell you that I'm familiar with every
7 single article that's out there, but I believe they are a basis
8 for how you unpack residual returns to a potential
9 fraud-related and nonfraud-related activity.

10 Q. Okay. And so the working definition that you came up with
11 based on this sort of generalized understanding, did you
12 discuss that with the government before you conducted your
13 analysis?

14 A. I don't believe I did. They asked me to review the PSR, as
15 well as Dr. Ferrell's report that raised concern with their
16 calculation, and then come up with a methodology on my own that
17 would test whether their calculation, the amount that the
18 government calculated, was reasonable.

19 Q. Okay. So I'm correct that you did not share your working
20 definition of "loss" with the government, right?

21 A. We certainly had a few calls. I can't recall as I sit here
22 what we discussed exactly on those calls. I might have
23 explained my approach to them.

24 Q. Okay. But you don't remember ever specifically telling
25 them what definition of "loss" you were using, do you?

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1 A. No, I don't.

2 Q. Okay. And you don't specifically remember them telling you
3 what definition of "loss" you should use in this case; correct?

4 A. That's correct.

5 Q. Okay. Now, one of the things that you talk about in some
6 of the articles that you've written is your analysis of the
7 impact of certain cases, including Supreme Court cases, on the
8 type of analysis that you do; correct?

9 A. I'm not exactly sure what you're referring to, but --

10 Q. Well, the questions that are involved in the types of
11 determinations that you're talking about in the cases in which
12 you testify are impacted by the state of the law to some
13 degree; correct?

14 A. Yes. Well, from my side, I always apply generally accepted
15 methodologies that can be used to conduct an analysis, like in
16 this case, event studies that have been around for 50 years.
17 And the idea of using principles to proportion based on a
18 volume is also a common practice.

19 So, yes, I applied generally accepted methods that's
20 used in the finance literature to my analyses.

21 Now, there are court decisions that might suggest how
22 you go about using some of those or how they might be applied
23 in a specific context, but that's generally what I rely on.

24 Q. Right.

25 And you cite some of those court decisions in some of

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1 the articles that you've written about the correct application
2 of event studies in securities litigation; correct?

3 A. Yes, the one I think you're referring to, I don't want to
4 speculate, but --

5 Q. I'll get to that. But the answer is yes; correct?

6 A. I cite *Halliburton* as an example, correct.

7 Q. Right. You cite some case law; correct?

8 A. That's correct.

9 Q. And the *Halliburton* case that you just mentioned is a
10 Supreme Court case; correct?

11 A. Right.

12 Q. One of the other critical Supreme Court cases in terms of
13 the calculation of loss in your field is the *Dura*
14 *Pharmaceuticals* case; correct?

15 A. That's correct.

16 Q. And in *Dura Pharmaceuticals*, you are aware that the Supreme
17 Court specifically stated that the loss calculation method that
18 you used in this case was an illogical loss calculation method;
19 correct?

20 A. Sorry.

21 MR. NAFTALIS: Objection, your Honor.

22 THE COURT: Overruled.

23 A. Sorry. I don't know if I heard you correctly, but did you
24 say that that decision said that my methodology was not
25 correct, is that what you -- was that the question?

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1 Q. Yes.

2 A. I don't know if that decision stated that specifically, but
3 I know that it states for securities class -- you're talking
4 about *Dura*. For securities class actions, it talks
5 specifically about how you should go about calculating losses
6 for shareholders in a securities class action.

7 Q. Right. And it addressed the specific methodology that you
8 deployed in this case; correct?

9 A. No. It addresses the concept of in-and-out trades, as well
10 as buy-and-sell transactions. You have to have a buy
11 transaction that has to have passed a corrective disclosure in
12 order for it to be part of a securities damages calculation, a
13 trade.

14 Q. I want to get to the corrective disclosure part in a moment
15 in terms of the type of economic analysis that you do.

16 But before we get to that, okay, I'm correct, right,
17 that the loss calculation method that was at issue in the *Dura*
18 case was a loss calculation methods that depended on
19 determining the loss on the basis of the inflation of the value
20 of manipulated shares; correct?

21 A. In that case, yes.

22 Q. Right. And that's exactly what you did in this case;
23 correct? You determined loss based on the inflation in the
24 value of the shares; correct?

25 A. I think there's a big distinction here that --

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1 Q. I want to unpack the distinction and I want you to give a
2 fulsome answer. I promise you I'm going to give you the
3 opportunity to do that. But it's important that I understand
4 what you did.

5 THE COURT: Well, I agree that it's important you
6 understand what he did, but I'm becoming uncomfortable because
7 the witness is not really here to talk about *Dura*
8 *Pharmaceuticals* or talk about *Halliburton*.

9 You're welcome to brief the issue of whether you think
10 the methodology that was applied here is inconsistent or -- is
11 inconsistent with *Halliburton* or *Dura Pharmaceuticals* or was
12 criticized in those cases, you're welcome to do that. But it's
13 not particularly useful for me to hear from an economist what
14 he thinks about Supreme Court decisions. That's not really why
15 he's here.

16 So you're welcome to explore with him what he did and
17 how he did it and what his methodology is, but I don't want to
18 get into case interpretation or what *Dura Pharmaceuticals* says
19 or doesn't say. That I'm not interested in; that I will not
20 hear, not today.

21 I mean, again, if you want to brief the issue, that
22 I'm more than welcome to read. But that's not really our
23 purpose today.

24 MR. JACKSON: Judge, I couldn't agree more, that that
25 would be an improper use of the Court's time. And we have

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1 cited that case and we intend to brief it after this to explain
2 exactly what the issue is.

3 The reason that I'm raising this is for a very
4 particular, very limited reason that only requires one or two
5 more questions, I promise I will move on. I think it will be
6 apparent to the Court I'm not asking any interpretation, I just
7 want to be clear in terms of what this witness's understanding
8 was and whether or not it was factored into just in terms of
9 the economic analysis that was done in the *Dura* case. But I'm
10 not asking any interpretation, and that relates to the one real
11 topic of my cross-examination.

12 If I could give the --

13 THE COURT: I'll hear the question and then I'll tell
14 you whether I'm going to allow it.

15 MR. JACKSON: Thank you. Thank you, your Honor.

16 BY MR. JACKSON:

17 Q. So stepping aside for a moment, okay, from *Dura*, your
18 calculation here was based on the inflation of the value of the
19 stock that you assumed occurred because of the market
20 manipulation; correct?

21 A. Correct.

22 Q. So your calculation of loss -- and let's go back to the
23 point that you raised a moment ago where we talked about
24 corrective disclosures. The corrective disclosure method of
25 analyzing loss is the more typical method of determining loss

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1 in a market manipulation case; correct?

2 A. I don't know if I have an answer for that. I would tend to
3 believe that the -- when we talk about securities class action,
4 we have a misrepresentation, and you have a constant inflation
5 throughout an extended period of time, and then you have a
6 correction of that misrepresentation, is different than what
7 you're seeing here, where there is a constant scheme of stock
8 manipulation that occurred on a daily basis almost.

9 Q. Okay.

10 MR. JACKSON: I'm going to move to strike that last
11 part, your Honor, because I think the witness has no foundation
12 for "constant scheme."

13 THE COURT: That's denied.

14 Q. Now, the question that I'm asking you is in the calculation
15 of market manipulation loss amounts. The vast majority of
16 cases will involve the analysis of the corrective disclosure,
17 am I correct about that or do you not know?

18 THE COURT: Are you asking him for the vast majority
19 of reported decisions talk about or involve an analysis of
20 corrective disclosures? Is that what you're asking him?
21 Because I don't know that he's really competent to tell us
22 about what the case law -- with what frequency certain measures
23 of damages are discussed in the case law. I don't know that
24 he's competent to do that.

25 MR. JACKSON: Yes, your Honor, I agree, he's not

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1 competent.

2 BY MR. JACKSON:

3 Q. But I'm not asking about the case law. I mean from the
4 standpoint of an economist attempting to determine how much
5 loss is involved in cases of market manipulation, it is by far
6 the case that the majority of analysis that is done is based on
7 analysis of corrective disclosures; is that correct?

8 A. There's a lot of case law that I'm not familiar with.

9 Q. So you don't know the answer?

10 A. But let me just state one for the record. I have worked on
11 a number of manipulation cases that involve other types of
12 manipulation, like FX and benchmark rates. In those cases, we
13 are doing all sorts of analyses that may not fit into that
14 definition that you are defining right now for this case.

15 Q. Fair enough.

16 Now, in this case, you looked at the PSR; correct?

17 A. Yes.

18 Q. Why did you look at the PSR?

19 A. Well, the government asked me to review the loss amount
20 that they had calculated; and then, based on my analysis, to
21 confirm or determine whether that was a reasonable amount.

22 Q. Was there any information from the PSR that was critical to
23 your analysis?

24 A. Yes. Certainly the conspiracy period they defined. So
25 they made a number of definitions that was relevant, just to

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1 make sure I examined the right sets of buy transactions or buy
2 trades by Maiden Capital. They also defined "Maiden Capital"
3 for me.

4 Q. Did you have a discussion with the government about whether
5 or not you could do a loss calculation in this case on the
6 basis of a corrective disclosure?

7 A. I don't believe I did.

8 Q. Did you see in the PSR a methodology defined as an example
9 that was given in the guidelines of how a loss calculation
10 could be done in a case like this?

11 THE COURT: I don't understand the question.

12 Q. You referred earlier to paragraph 151 of the PSR; correct?

13 A. Correct.

14 Q. And this is the paragraph you were referring to; correct?

15 A. That's right.

16 Q. Where it says: According to the government, the loss
17 amount for Count Four is 25.2 million, pursuant to USSG 2B1.1,
18 application note 3(F)(ix). And then it says: In a case
19 involving the fraudulent inflation or deflation in the value of
20 a publicly traded security or commodity, the court, in
21 determining loss, may use any method that is appropriate and
22 practicable under the circumstances.

23 An example of one such method under which the actual
24 loss attributable to the change in the value of the securities
25 determined by calculating the difference between the average

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1 price of the security during the period that the fraud occurred
2 and the average price of security during the 90-day period
3 after the fraud was disclosed to the market and, B, multiplying
4 the difference in average price by the number of shares
5 outstanding.

6 You saw that in paragraph 151; correct?

7 A. That's correct.

8 Q. Did you discuss with the government whether or not that
9 would be an appropriate method of calculating loss in this
10 case?

11 A. My understanding is that's the --

12 Q. No, no, no. I'm only asking you did you discuss with the
13 government whether or not that would be an appropriate method
14 of determining loss in this case?

15 A. I didn't discuss that specifically with them.

16 Q. I'm correct, aren't I, that in terms of market
17 manipulation, there isn't necessarily a loss in every situation
18 of market manipulation?

19 A. As a general matter that could be the case.

20 Q. There could be a number of cases where there's no loss at
21 all, even where there was market manipulation; correct?

22 A. You need to define that more. Are you talking about a
23 whole scheme or just a specific day, a particular trade?

24 Q. I'm talking about generally.

25 THE COURT: Well, generally isn't helpful. So you

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1 need to be more specific. He needs to know whether you're
2 talking about a single day, a longer period of time. He needs
3 to know the context in which you're asking the question.

4 MR. JACKSON: Absolutely, your Honor.

5 Q. Let's imagine a day on which a person manipulates the
6 market and inflates the value of some shares from \$5 to \$10,
7 okay. Is it your testimony that that would always result in a
8 loss to investors?

9 A. Depends on the circumstances. So if there's an inflation
10 of \$5, and if I subsequently purchased at \$10, I would have
11 paid for a share that's only worth 5. So I would -- when the
12 truth comes out or the information about that fraud is revealed
13 in a general sense, then I would have overpaid for my
14 investment.

15 Q. I just want to repeat my question.

16 Is it your testimony that in a situation where the
17 price of a share was inflated from \$5 to \$10, that it would
18 always result in a loss to the purchaser?

19 THE COURT: Well, I think he's given you an example.
20 I think he has answered the question in the sense that he's
21 provided certain parameters that are not in your question.
22 Maybe they are implicit in your question, I don't know.

23 But he's answered your question applying certain
24 parameters. The parameters that he used is that if an investor
25 bought the security at \$10, and the \$10 price reflected

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1 manipulation from \$5 to \$10, then he would have overpaid \$5 for
2 the security. So that's the context in which he's answered
3 your question.

4 Obviously you're welcome to pursue that. But you seem
5 to be striving for a more general answer, and I don't know
6 whether he can give you a general answer or not.

7 MR. JACKSON: Let me try to pursue that, your Honor.
8 I think that's helpful.

9 BY MR. JACKSON:

10 Q. So what you're saying is there could be a situation where a
11 person has bought this \$10 share and, therefore, based on the
12 fact that it was inflated by \$5, according to your theory, they
13 have realized a loss at the moment that they purchase a \$10
14 share of \$5. Am I correct?

15 A. Well, they would have overpaid by the \$5.

16 Q. Okay. But is that --

17 A. And not realized it. I think you're back to *Dura* now.

18 You don't realize that until it's disclosed at this
19 fraud. So he might sell it the next day for 10, in which that
20 individual have not had a loss; but the subsequent purchaser,
21 who then sitting on a security that's now inflated by \$5.

22 Q. I'm glad you said that. So you said going back to *Dura*,
23 they haven't realized a loss, but they purchased something that
24 you believe is worth less than what they paid for it.

25 A. That's correct.

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1 Q. But the original seller who bought it at 10, and in your
2 hypothetical sold it before any price drop never realized any
3 loss; correct?

4 A. That's correct.

5 Q. Now, did you, in your analysis, undertake -- attempt in any
6 way to determine whether anyone actually realized a loss as a
7 result of the market manipulation in the sense that you just
8 described?

9 A. Not directly.

10 Q. Okay. It is entirely possible, correct, that no one
11 realized a loss as a result of the market manipulation in this
12 case?

13 A. I'm not sure I follow the logic of the question, so I'm
14 trying to see if I understand it.

15 Q. Please do.

16 A. If I'm engaged in a conspiracy scheme to manipulate, and I
17 am engaging in elevating or inflating the price, whoever is
18 buying those securities that you are inflating the price of
19 will have purchased something that is not worth what it should
20 have been worth had the scheme not existed.

21 Q. Right.

22 A. So that's a way of quantifying the loss that they had.

23 Q. Right.

24 And you're aware that in the *Dura* case that you just
25 referenced, the Supreme Court said that's not the realization

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1 of the loss?

2 MR. NAFTALIS: Objection, your Honor.

3 THE COURT: Sustained.

4 Q. Now, is it --

5 THE WITNESS: Can I answer that question?

6 THE COURT: No, I sustained the objection.

7 When I sustain the objection, that means you don't
8 answer the question.

9 THE WITNESS: Sorry.

10 BY MR. JACKSON:

11 Q. You draw a distinction. The distinction that you drew a
12 minute ago, where you talked about purchasing at an inflated
13 amount versus realization of the loss, those are two separate
14 concepts under your analysis; correct?

15 A. If I heard you -- I think you're using two different
16 definitions of loss. There's a loss and a realized loss. And
17 you refer to *Dura*, I believe, in that, I haven't read it in a
18 while, but if you go back and read it, they are very explicit
19 talking about realized losses.

20 Q. Okay. Now, to go back to your hypothetical, right, it's
21 possible that a person could purchase a share at \$5 -- I'm
22 sorry, at \$10 that had been inflated artificially, improperly
23 by \$5 to \$10. And before they take any action, the true price
24 of the share could rise to \$10; correct?

25 A. I'm not sure I follow.

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1 Q. Is that confusing? That's why I started out the way I did.

2 Let me give you an example.

3 THE COURT: I must say, I don't know what "true price"
4 means, but --

5 MR. JACKSON: I agree, your Honor. And I'm attempting
6 the -- I think that's the language of the witness when he
7 talked about the true price of the share.

8 But let me try to unpack that.

9 Q. Let's imagine a scenario, right, where you have a company,
10 an electronics company, okay. Electronics company, okay?

11 A. Okay.

12 Q. And its shares are trading at \$5 a share. Through
13 artificial manipulation, the price of the shares goes up to
14 \$10. Let's assume it's a legal artificial manipulation. It
15 goes up from \$5 to \$10, okay?

16 Now, before the next day's trading begins, an
17 announcement is made by the company that they have developed a
18 device that is so revolutionary to the technology world, it
19 will be twice as revolutionary as the iPhone. The demand for
20 this product is immediately recognized by all news sources as
21 something that's going to be enormous.

22 The actual value of the shares the next day rises as a
23 result of this new information, and the shares the next day are
24 trading at \$15. It's possible in such a situation that the
25 original market manipulation would have no impact on any

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1 realized transaction that occurs in the market, right?

2 A. I think that's exactly what Dr. Ferrell was concerned with,
3 that you have to adjust for that firm-specific event that took
4 place, in your case a super iPhone. And so therefore, you need
5 to perform an event study on a daily basis, and you need to
6 adjust for market industry and firm-specific events and filter
7 out what is the residual. And so in this case, on the first
8 day you still have an inflation that occurred from the scheme.

9 Q. Okay. Understood.

10 What I'm asking you is -- and maybe just to put a
11 finer point on that, is it your theory that in that
12 hypothetical, the person who has the share the next day that's
13 selling for \$15, realized a loss of \$5 on the first day when
14 the shares went up by \$5?

15 A. Yes. So let's -- in this hypothetical, if you're looking
16 at a price on day one in your hypothetical that went from 5 to
17 10, so we're now looking at \$10 at the close of day one, and
18 then on day two it goes to 15 in your hypothetical; correct?

19 Now, on day two, in the but-for world, the price
20 should have been 5 still and, therefore, that investor would
21 have had gains of \$10 instead of just the \$5. So he has been
22 defrauded, so to speak, for the conspiracy to inflate the
23 price.

24 Q. You're talking about the person who purchased at 10, who
25 should have been able to purchase at 5?

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1 A. Should have been able to purchase at 5.

2 Q. Okay. But I'm just talking about the person who purchased
3 at 5, okay. The person who purchased at 5, and the next day
4 it's at 15 as a result of factors above and beyond the market
5 manipulation, is there a loss?

6 THE COURT: I'm sorry. I'm confused.

7 MR. JACKSON: Judge, I'm going to move on from this
8 point. I think we have enough information.

9 Q. The manipulation period as we've already discussed ended in
10 2011, as you understand it; correct?

11 A. September 15th, 2011.

12 Q. And the price of the stock did not collapse after that?

13 A. We looked already at an exhibit where it showed that the
14 price was moving around that time, and then it ended up higher
15 three months later.

16 Q. The fact that the price at the conclusion of what you
17 understand to be the manipulation period didn't drop
18 dramatically is some evidence of the possibility that there was
19 no loss to investors; correct?

20 A. I'm not sure I'm able to answer that other than to say that
21 how much did the market understand in that three-month period
22 we're looking at that the conspiracy might have impacted the
23 stock. I've done no analysis to verify or confirm what that
24 amount would be.

25 Q. Apart from the Factiva news -- apart from the Factiva news

J42VTUZ3

Voetmann - cross

1 analysis, you weren't looking at any other confounding
2 information; correct?

3 A. Yes, I wasn't looking for any other additional materials
4 that could be confounding information.

5 Q. It's fair to say, correct, that there could be other
6 factors that impact the price of a stock beyond the
7 information -- beyond the market manipulation that occurred and
8 beyond the information in the databases that you are looking
9 at; correct?

10 A. It's hypothetically possible, though Factiva is the most
11 common database that covers the vast majority of articles that
12 is available to investors and the public. So is it possible?
13 Yes. But I believe that Factiva had the broadest range of
14 covering all the news that came out.

15 Q. It's also the case that the stock market in general
16 throughout the time period identified as the manipulation
17 period rose significantly during that time period, right?

18 A. Exactly. And that was one of the four concerns Ferrell
19 had, that you should adjust for that increase in the market.

20 Q. I'm not asking you any analysis of it, but I'm just asking
21 you the question: Are you familiar with the Second Circuit's
22 case in *United States v. Rakawski*?

23 A. No, I'm not.

24 Q. You didn't discuss the *Rakawski* case at all with the
25 prosecutors in this case; correct?

J42VTUZ3

Voetmann - cross

1 A. I don't believe so.

2 MR. JACKSON: May I have one moment, your Honor?

3 THE COURT: Yes.

4 (Counsel conferred)

5 (Continued on next page)

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J423TUZ4

Voetmann - Cross

1 BY MR. JACKSON:

2 Q. Just a couple more questions for you, Dr. Voetmann.

3 Dr. Voetmann, you would agree that there were days
4 that you looked at during the course of your analysis where the
5 market cap of KIT Digital rose significantly even when there
6 was no Maiden trading, correct?

7 A. So, let me just -- there's 22 days you said significantly,
8 correct?

9 Q. Yes.

10 A. There was 22 days when there was a statistically
11 significant price increase, according to Dr. Ferrell's event
12 study, and your question was about those 22 days?

13 Q. No. My question is, during the time period, the alleged
14 manipulation period, there were a number of days you saw where
15 the market cap of KIT Digital rose significantly, even when
16 Maiden was doing no trading, correct?

17 A. There was five days of what you're speaking of. Five days
18 of the 22 when there was no buy volume, and there was a
19 significant price increase, and I excluded those.

20 Q. Why did you exclude them?

21 A. Because there was no trades. And this goes to my analysis
22 of examining the low end of the government's number, to see if
23 it was reasonable. So, when I was just focusing on those 22
24 days, I excluded those five days that you referred to.

25 Q. Now, you referred to your analysis the \$10 million as a

J423TUZ4

Voetmann - Cross

1 conservative analysis, correct?

2 A. That's correct.

3 Q. But, as we've already discussed, the \$10 million figure
4 that you calculate, is not the lowest possible amount of loss
5 that could have been experienced by investors in this case,
6 correct?

7 A. No basis to -- I don't know how I should answer your
8 question. Based on my analysis, my test, that's the low end of
9 the range in my opinion.

10 Q. Okay.

11 MR. JACKSON: I have no further questions for this
12 witness, your Honor.

13 THE COURT: All right.

14 THE WITNESS: Your Honor, can I go to the restroom?

15 THE COURT: We're going to take a brief recess for the
16 witness. So, we'll be back shortly.

17 (Recess)

18 MR. WEITZMAN: May I inquire?

19 THE COURT: Are we prepared to proceed?

20 MR. WEITZMAN: Yes, your Honor.

21 THE COURT: Okay.

22 MR. WEITZMAN: Thank you.

23 BY MR. WEITZMAN:

24 Q. Dr. Voetmann, you're familiar with the efficient market
25 hypothesis?

J423TUZ4

Voetmann - Cross

1 A. I am.

2 Q. You're. That hypothesis posits that the price of a stock
3 in an efficient market should reflect all information and true
4 value of the stock on that given day. Is that a
5 characterization, fair characterization?

6 A. It is a common characterization. Although there is some
7 debate in the literature whether it is the true value of the
8 stock, the fundamental value, but it should reflect all
9 available information.

10 Q. In a market manipulation scheme such as the one charged
11 here, the allegations were that Maiden was engaged in volume
12 purchases of KIT Digital stock in order to pump up the price of
13 KIT Digital stock, correct?

14 A. That's my understanding of the allegation.

15 Q. And is it fair to say that an efficient market, after that
16 pumping up of the price of the stock and the volume purchases
17 end, the market should adjust to the true value of KIT
18 Digital's stock in an efficient market?

19 A. Again, I think you have to be careful with the terminology
20 of true value. But it should adjust to at least its
21 understanding of the information it learned about the
22 conspiracy scheme.

23 Q. Putting aside any corrective disclosure, meaning any
24 disclosure of market manipulation, if Maiden isn't pumping up
25 the price of the stock, in an efficient market, should the

J423TUZ4

Voetmann - Cross

1 stock adjust on its own?

2 A. Yes.

3 Q. How quickly is the stock in an efficient market supposed to
4 adjust on its own after the conclusion of a manipulation
5 period?

6 A. Well, so, excuse me, I want to make sure I understand your
7 question. But if I understand it, are you saying that the
8 market now, in your scenario, your market now learns the truth
9 about the extent of the conspiracy scheme? And at that point,
10 when the market fully gets the information about the scheme,
11 that it would adjust to that information?

12 Q. No, I'm not talking about a corrective disclosure like an
13 indictment or anything of the sort. I'm talking about how
14 would the -- how is the market supposed to react after the
15 manipulation ends? What is supposed to happen to the price of
16 the stock?

17 THE COURT: Where there been no disclosure of the
18 manipulation. Right?

19 MR. WEITZMAN: Right. No more volume purchases by
20 Maiden.

21 Q. What is supposed to happen to the price of the stock?

22 A. So if clearly the market does not know anything about the
23 conspiracy, the stock would possibly, as you see in this chart,
24 continue on trading at this level.

25 Q. Do you know any example, do you have any examples of market

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Voetmann - Cross

1 manipulation where, at the conclusion of the manipulation
2 period, without a corrective disclosure, the market didn't
3 adjust to the true price in an efficient market?

4 A. As I sit here today, I don't have an example to offer you,
5 no.

6 Q. Is it fair to say in the economic literature, economists
7 say that even without a corrective disclosure, following the
8 termination, the ceasing the manipulation, the stock price
9 should adjust to its true value? Are you aware of that?

10 A. I would have to see the literature to assess that. If you
11 follow general principles of finance, the market would continue
12 on with no knowledge of the conspiracy scheme. So, there's no
13 adjustment or reaction to occur when the scheme ended in your
14 hypothetical.

15 Q. It's your testimony that your assumption is that, barring a
16 corrective disclosure that reveals the manipulation, the market
17 would not adjust in an efficient market. That's your
18 testimony?

19 A. If I understand your assumption correctly that no one knows
20 about the conspiracy scheme, no one is familiar with it, no
21 investors, no buyers, then they would not be able to -- the
22 market would not be able to adjust to the any information.

23 Q. Have you heard of a pump and dump scheme?

24 A. Yes.

25 Q. Are you aware in pump and dump, let's say a boiler room

J423TUZ4

Voetmann - Cross

1 pump and dump, the boiler room props up the price of the stock,
2 correct?

3 A. Yes.

4 Q. When the boiler room disbands, what happens to the price of
5 the stock without a corrective disclosure?

6 A. Dump and pump. It might fall.

7 Q. Isn't it a certainty, a near certainty it will fall once
8 the pumping ends?

9 A. After the scheme, yes.

10 Q. In those situations, there's no corrective disclosure. The
11 price just resolves itself. It goes down, right?

12 A. But I'm not sure if that analogy fits to this KIT Digital.

13 Q. Okay. Let's move on. You defined loss when Mr. Jackson
14 asked you, and I think I quoted it correctly, but correct me if
15 I'm wrong. The loss is the -- you calculate the impact
16 Maiden's trading had on residual returns for KIT Digital after
17 adjusting for market and industry. Is that correct?

18 A. And for firm specific.

19 Q. And firm specific. Thank you. Now, when you say the
20 impact that Maiden's trading had on residual returns, that's
21 not exactly what you did, right?

22 A. It's the proportional Maiden trades of the residual return.

23 Q. But to be clear, you only looked at positive residual
24 returns, correct?

25 A. In my assessment of the --

J423TUZ4

Voetmann - Cross

1 MR. NAFTALIS: Asked and answered.

2 THE COURT: You may answer.

3 A. As my figure 12 shows, the test I did for the government's
4 loss calculation, I tested only the positive residuals.

5 Q. There were negative residuals on days that Maiden was
6 trading, correct?

7 A. Yes.

8 Q. And you didn't incorporate those at all in your analysis,
9 right?

10 A. I'm not -- so --

11 Q. In your calculations?

12 A. I did not incorporate the negative residuals. I don't
13 believe it would be appropriate to offset any gains with that
14 loss that comes from a negative residual.

15 Q. What is your basis, when you say it's not appropriate, are
16 you talking about as a legal matter it's not appropriate?

17 A. No, from an economic matter, if you are engaged in -- as an
18 economist looking at a conspiracy scheme, if you engaged in
19 trying to inflate the value but somehow your scheme does not
20 work and it goes in the opposite direction, I would not factor
21 that in, in my assessment of how poorly you executed the
22 scheme.

23 Q. So from a legal perspective, you're not opining as to
24 whether it is appropriate to look at any deflationary effect
25 Maiden's trading may have had, right?

J423TUZ4

Voetmann - Cross

1 A. I'm not an attorney and I don't have a legal opinion, no.

2 Q. Did anybody tell you to ignore negative returns?

3 A. No. But just from the answer I just gave, that would be
4 the economic reason for why not to include them.

5 Q. You made an assumption that Maiden's trading contributed to
6 abnormal price increases in KIT Digital stock, correct?

7 A. That was the intent of the conspiracy scheme as I
8 understand.

9 Q. Did you exclude the possibility that Maiden's trading also
10 contributed to abnormal price declines?

11 A. I think that was the question you just asked previously.

12 Q. It's not exactly. I'm just wondering whether -- not did
13 you exclude the analysis, but did you exclude the possibility
14 that his trading caused KIT Digital's stock price to abnormally
15 decline?

16 A. Sorry. Can you define "his"? You mean Maiden Capital?

17 Q. Maiden.

18 A. I did not include in my test any negative residuals. As I
19 just previously explained, from an economic reason, I don't
20 think that would be appropriate.

21 Q. Do you know what the effect would have been on the loss
22 amount calculation had you included negative residuals on days
23 that Maiden was buying or selling KIT Digital stock?

24 A. I do not. I do not see a reason to perform such
25 calculation.

J423TUZ4

Voetmann - Cross

1 Q. You didn't have anybody on your team attempt that
2 calculation?

3 A. I did not.

4 Q. Would it surprise you to learn that it would be a negative
5 loss amount?

6 A. If you say so. I haven't seen any analysis to support
7 that.

8 Q. One of the things I want to focus in particular now on the
9 11 days that comprised the \$10 million figure. I provided a
10 copy of this to the government yesterday. This is KIT Exhibit
11 F113. And what we've taken here, Dr. Voetmann, is your
12 appendix, and taken out all the data of the days that don't
13 comprise the 11, and incorporated it into the 11 days that you
14 rely on for the \$10.4 million figure.

15 MR. WEITZMAN: We offer KIT Exhibit F113.

16 THE COURT: Any objection?

17 MR. NAFTALIS: No, your Honor.

18 THE COURT: F113 is received.

19 (Defendant's Exhibit F113 received in evidence)

20 Q. Let's start with some of the days on this chart. May 10,
21 2011. That's your very last day on this chart, right?

22 A. Do you mind pushing it up a little bit?

23 Q. I'm sorry about that. May 10, 2011. I can also hand you a
24 copy?

25 A. I just can't see the last column now.

J423TUZ4

Voetmann - Cross

1 Q. Yes.

2 A. Now I can't see the first.

3 Q. You're right. Okay.

4 A. There you go.

5 Q. Can you read this clearly, sir?

6 A. I believe I can.

7 Q. Now, on that date, you attribute \$16,000 of loss to
8 Maiden's trading, correct?

9 A. You're looking at May 10, 2011?

10 Q. May 10, 2011.

11 A. The last row?

12 Q. Yes.

13 A. Yes.

14 Q. You concluded on that date that -- just to be clear, Maiden
15 on that date is less than a 1 percent trader, buyer of KIT
16 Digital stock on that date, right?

17 A. That's correct.

18 Q. And on that date, May 10, 2011, the company's trading on
19 the Nasdaq, correct?

20 A. That's correct.

21 Q. There is a large volume of trading at that time. Do you
22 know any study, economic study, that supports the conclusion
23 that being less than a 1 percent trader in a stock can
24 manipulate the market in that stock?

25 A. So again, I think you have to take it into context of the

J423TUZ4

Voetmann - Cross

1 entire period. I don't know of any study that would zoom in on
2 just one day like this. It is possible there are studies out
3 there. You have to take it into the context of the entire
4 period. As the example you provided earlier today, it is
5 possible that there a lot more trades by Maiden leading up to
6 this date. I have not looked at that.

7 Q. But you are including this date, May 10, as a date that
8 causes the loss. Correct?

9 A. Yes, and I included specifically because I wanted to test
10 the low end of the government's calculation, and then focus on
11 the days that Dr. Ferrell had highlighted, which included these
12 11 days.

13 Q. Are you aware, sir, that on May 10, 2011, Maiden was a
14 net -- I'm sorry. Maiden -- withdraw that.

15 Are you aware, sir -- let me withdraw again.

16 When the company's listed on the Nasdaq, it was a
17 relatively liquid stock, correct?

18 A. It would be more liquid than appears to be.

19 Q. Putting aside Maiden's trading, do you have any economic
20 literature to support that a small trader, less than 1 percent
21 on a given day, can manipulate the stock when there is abundant
22 trading in the real market between others? Do you have any
23 literature to support that?

24 A. I have literature to support looking at how volume affects
25 stock prices. There are literature studies volume

J423TUZ4

Voetmann - Cross

1 specifically. Here what I'm doing is to focus on the
2 conspiracy scheme to manipulate, and proportion out what Maiden
3 Capital attempted to do.

4 Q. When you say that there is academic literature on how buy
5 volume manipulates the market. It is more than 1 percent of
6 the buy market in a highly liquid well-traded stock, right?

7 A. Economic studies would not focus on just one security.
8 Typically we would do a broader set of securities and broader
9 set of volumes. So I don't have the answer for you right now
10 whether that exists or not.

11 Q. You concluded that on May 10, 2011, any price increase is a
12 reaction to Maiden's supposed pumping up of the stock, correct?

13 A. I concluded that only 1 percent of the price increase is
14 associated.

15 Q. Your conclusion causally is the price increase -- the
16 statistically significant price increase is due to Maiden's
17 trading. Not market, industry, firm specific, or confounding
18 events, correct?

19 A. That's correct. So we left, as Dr. Ferrell said, aside
20 from manipulation, we are left with that as a plausible causal
21 relation. And of that increase, I only take 1 percent to
22 allocate to the loss.

23 Q. Now, in order to determine whether there was any company
24 specific or confounding news, you relied on this Factiva
25 database as you testified, correct?

J423TUZ4

Voetmann - Cross

1 A. Correct.

2 MR. WEITZMAN: I'm putting on the screen Defendant's
3 Exhibit F114. For the record, this is the Factiva database
4 that Dr. Voetmann relied on or produced. The only change we
5 made is we carried over the top headline so we can all
6 understand what each of the columns are. Otherwise it is the
7 exact same information. We provided this to the government
8 yesterday. We offer Defendant's Exhibit F114.

9 THE COURT: Any objection?

10 MR. NAFTALIS: No, your Honor.

11 THE COURT: F114 is received.

12 (Defendant's Exhibit F114 received in evidence)

13 Q. Let's take a look at May 10, which is May 10, 2011 in this
14 document. That is page 14 of Defense Exhibit F114.

15 Did you review all the articles dated May 10 on this
16 date?

17 A. I have to look at the article to confirm if I reviewed
18 them. But they look familiar, the titles of the articles, the
19 headlines in that second column look familiar.

20 Q. You concluded that only one article is new news; is that
21 correct, the line 662?

22 A. Right. Because if we looked at earlier articles, you'll
23 see when they talk about the earnings and the losses in Q1,
24 these articles provide information about Q1 results, and that
25 had previously been disclosed. So from a confounding news

J423TUZ4

Voetmann - Cross

1 analysis, as we typically do in securities class actions, you
2 would conclude that there is no new information to the market
3 on that day.

4 Q. Sir, it's important to determine to have access to all
5 potential confounding information before you reach a conclusion
6 as to whether there is confounding information out there.
7 That's tautological actually, right?

8 Do you still have Government Exhibit 3302, the analyst
9 reports?

10 A. I do.

11 Q. Can I ask you to turn to page 520 of that on the bottom.
12 Double sided so I can put it on the screen.

13 MR. WEITZMAN: We offer Government Exhibit 3302.

14 MR. NAFTALIS: No objection.

15 THE COURT: 3302 is received.

16 (Government's Exhibit 3302 received in evidence)

17 Q. Page 520 is a Maxim Group research analyst report dated
18 May 10, 2011?

19 A. Hmm-hmm.

20 Q. Do you see that?

21 A. I do.

22 Q. This research report dated May 10, 2011 isn't listed on
23 your Factiva sheet as one of the documents you reviewed,
24 correct?

25 A. That's correct.

J423TUZ4

Voetmann - Cross

1 Q. Let's go to June 10, 2010, which is right over here. On
2 that date, again, you reached the conclusion that Maiden's
3 0 percent trading was the cause of a statistically significant
4 increase in KIT Digital stock, correct, and then you weighted
5 that.

6 A. No, I don't think I conclude -- so, this is a statistically
7 significant day, and on that day, because Ferrell points to
8 that day as an important day, I weighted that with the Maiden
9 trades that day. Correct.

10 Q. Is it your testimony that Maiden did not cause a
11 statistically significant increase in the price of KIT Digital
12 stock on June 10?

13 A. So, given on that day we have accounted for market,
14 industry, and firm specific factors, the conspiracy scheme may
15 be a plausible causal effect on the residual, as it could be
16 that is what drives the residual return that day.

17 Q. I'm sorry. I couldn't understand what you said. Can you
18 say that again?

19 A. Sure. On that day, June 10, it's a statistically
20 significant price reaction that day. And in my analysis, we
21 have here, we have excluded market, industry, and firm specific
22 events. So as Dr. Ferrell said, aside from the manipulation,
23 if you control for those factors, it is plausible that there is
24 a causal relation between the manipulation and that price
25 response.

J423TUZ4

Voetmann - Cross

1 Q. Dr. Ferrell never said in his report that there was a
2 plausible relationship between the man -- between Maiden's
3 trading and the stock -- a statistically significant price
4 increase; isn't that correct?

5 A. He said that aside from manipulation. You have the
6 government should have controlled for market, industry, and
7 firm specific information.

8 Q. You read that statement "aside from manipulation" as a
9 conclusion by Ferrell that the only alternative to market,
10 industry, and company specific, is market manipulation by
11 Maiden? Is that your testimony?

12 A. I'm -- that's why I used the word plausible. He's stating
13 four factors, so it could be, as he stated, there is four
14 factors that it could be driven by the conspiracy scheme.

15 Q. So, other than Dr. Ferrell's statement that you're
16 interpreting in that way, you're relying solely on that to
17 render a conclusion or an assumption that it's plausible that
18 Maiden's trading caused this statistically significant price
19 increase?

20 A. So for this test of the government's amount of losses, this
21 is how I wanted to test the low end of their range, by focusing
22 just on these 11 days and proportion that out by their volume.
23 In that sense applying an event study, applying proportional
24 principles from those two, which are commonly done, that's how
25 you would calculate the loss.

J423TUZ4

Voetmann - Cross

1 Q. I'm sorry. I have to ask that question again. Aside from
2 Dr. Ferrell's statement that you interpreted in your way,
3 that's the basis for your assumption?

4 MR. NAFTALIS: Objection.

5 THE COURT: Sustained.

6 Q. Aside from Dr. Ferrell's statement that you quoted, that's
7 the basis for your assumption that Maiden's market manipulation
8 is the only alternative to -- is the only reason for a
9 statistically significant price increase when market, industry,
10 and company news are excluded?

11 THE COURT: Sustained.

12 Q. So on June 10 -- let me withdraw that.

13 Did you do any analysis that determined how efficient
14 the market in KIT Digital stock is?

15 A. No.

16 MR. NAFTALIS: Your Honor, asked and answered.

17 Q. Can you turn to Government Exhibit 3304, which is what I
18 provided to you. This is another one of the research analyst
19 reports. And it's produced by the government.

20 MR. WEITZMAN: We offer Government Exhibit 304.

21 MR. NAFTALIS: No objection, your Honor.

22 THE COURT: 3304 is received.

23 (Government's Exhibit 3304 received in evidence)

24 Q. If you would turn to page 115. This is a research analyst
25 report issued on June 9, 2010, by Merriman Curhan Ford by

J423TUZ4

Voetmann - Cross

1 managing director Richard Fetyko. Do you see this document?

2 A. I do.

3 Q. Are you were you aware this document wasn't captured in
4 your Factiva database on here?

5 A. I see the date here on June 10, 2010. Is that the date?

6 Q. That is the date. Do you know when on June 9, 2010,
7 Merriman Curhan Ford released its research analyst report about
8 KIT Digital?

9 A. I do not.

10 Q. Do you know whether the effect of the June 9, 2010,
11 research report released by Merriman Curhan Ford was totally
12 impacted in the price of the stock on June 9?

13 MR. NAFTALIS: Your Honor, asked and answered and
14 foundation. He said he didn't look at these reports, so I
15 think he has no foundation to answer any of these questions.

16 MR. WEITZMAN: Well, the point is that he hasn't done
17 this analysis, your Honor. That's the record I need to
18 establish.

19 MR. NAFTALIS: I think we got that in the first part
20 of the testimony. He did not look at these reports, but he
21 testified all the information in the analyst reports is in the
22 news reports that he looked at.

23 THE COURT: That's my recollection of the record.

24 MR. WEITZMAN: Your Honor, I don't think he testified
25 that all the information in the research analyst reports are in

J423TUZ4

Voetmann - Cross

1 the news reports. He decidedly did not testify to that.

2 THE COURT: Well, I disagree. That's my recollection.
3 He did testify to that. He testified, well, he testified on a
4 number of things about these exhibits. First of all, he said
5 that many of the reports were computer generated. He didn't
6 consider them analyst reports at all. He said with respect to
7 the exhibits that did contain analyst reports, he believed that
8 they likely were picked up by Factiva, or more precisely, that
9 the information contained would have been picked up by Factiva.
10 That's my recollection of what he testified to as to these
11 exhibits.

12 MR. WEITZMAN: Okay.

13 Q. Dr. Voetmann, I'm putting up your Factiva, which is
14 Defendant's Exhibit F114. Do you see June 9, 2010 on Factiva
15 and June 10, 2010?

16 A. I do.

17 Q. Is it correct to say that the Merriman Curhan Ford research
18 analyst report is not referenced on your Factiva database?

19 A. No, I think that's incorrect. You look at row 325. It
20 says by Merriman, specifically referencing to this report.

21 Q. The report itself isn't on the Factiva database, correct?

22 A. I don't have the article in front of me, what was included
23 in the article. But it probably have -- I don't want to
24 speculate. It normally would have included a description of
25 what was the published by Merriman.

J423TUZ4

Voetmann - Cross

1 Q. Do you see that you noted beside that article, line 325,
2 that this is a piece of new information, correct?

3 A. Yes.

4 Q. And do you see the title of the article is "KIT Digital
5 Pullback Presents Buying Opportunity Says Merriman." Correct?

6 A. Yes.

7 Q. You don't know when that article was published on June 9,
8 2010, right?

9 A. I don't have the -- if we had the article we might,
10 sometimes they'll provide the time stamp of the article.

11 Q. Do you know, did you do an analysis to determine whether
12 the articles were published before or after the close of
13 trading?

14 A. I didn't do a systematic analysis. I don't recall right
15 now. But looking at the article, as we reviewed the articles,
16 we would have taken in all the information in those articles.
17 But I can't recall that article specifically.

18 Q. Not all articles have time stamps on them?

19 A. That's correct.

20 Q. If the article was in fact published on June 9, 2010, after
21 the close, or near the close of the trading day, it might still
22 have an effect on trading on June 10, correct?

23 A. It's possible. I'd have to look at the article.

24 Q. Do you agree with me when a research analyst gives a
25 recommendation or says something is a buying opportunity, that

J423TUZ4

Voetmann - Cross

1 may be confounding to the price of the stock?

2 A. I would have to read the article to determine what was in
3 that article.

4 Q. Okay. I'm showing you what's been marked as Government
5 Exhibit 3304. This is the actual research analyst report. And
6 it says --

7 THE COURT: If there is a particular page in 3304,
8 right.

9 MR. WEITZMAN: On page 115. The Merriman Curhan
10 article. Research analyst report on June 9.

11 Q. It states: "we reiterate our buy on KIT Digital and our 16
12 to \$18 valuation range. The recent stock pullback offers
13 investors an attractive entry point on this pure play on the
14 adoption of online and mobile video."

15 Do you see that?

16 A. I do.

17 Q. You can't rule out the possibility that this article, this
18 research analyst recommendation for investors to come into the
19 stock, is confounding news, can you?

20 A. Well, I -- based on my professional experience, often
21 reading analyst reports, as well as looking at news articles,
22 as I sit here right now, I did not see this report itself. But
23 I would have to look at the news articles to see if Merriman in
24 fact have made these statements earlier, in which case it would
25 be a new report, but it may not contain new information so

J423TUZ4

Voetmann - Cross

1 that's a judgment call on my part.

2 Q. Is the fact that a research analyst, sir, makes --

3 THE COURT: I suspect the fact it says "we reiterate"
4 suggests that they've said it before, right?

5 THE WITNESS: It's possible, yes.

6 Q. Do you recognize, do you acknowledge that when research
7 analysts recommend people to buy a stock, it could be
8 confounding news?

9 A. It really depends on how they make that recommendation.

10 Q. Okay. So it is a case-by-case basis?

11 A. It is.

12 Q. You have to research and read the research analyst reports
13 on a case-by-case basis to make that determination, right?

14 A. To assess whether there's any new information in that
15 report, it might be a new report, but oftentimes when
16 analysts -- equity analysts does is restating what was
17 discussed on a conference call or what was previously published
18 by the company in a press release. And so many of these
19 reports, even though they are analyst reports, may in fact not
20 contain any additional new information that would therefore
21 make it a confounding piece of news.

22 Q. Okay. Turning to your Exhibit A, I'm sorry, your report,
23 Government Exhibit V1. And I'd like to turn to April 12, 2011.

24 THE COURT: I'm sorry, you said V1 and then you said
25 turning to April 12. I don't know what you're talking about.

J423TUZ4

Voetmann - Cross

1 MR. WEITZMAN: April 12, 2011 is on page C13 of
2 Government Exhibit V1. I'm sorry. I have the wrong date. Let
3 me find the right date and then I'll come back to it.

4 Q. Did Factiva, do you recall whether Factiva posts articles
5 from Seeking Alpha?

6 THE COURT: From what?

7 MR. WEITZMAN: A website blog called Seeking Alpha.

8 THE COURT: Seeking Alpha?

9 MR. WEITZMAN: Yes.

10 Q. Do you recall seeing any Seeking Alpha articles on Factiva
11 database?

12 A. I don't recall seeing Factiva -- I'm very familiar with
13 Factiva -- no, I'm sorry, Seeking Alpha. It is a common blog
14 that a lot of people using to post information, whether it's
15 verified or not. But a lot of investors post anonymously on
16 this blog, so that's a common -- Seeking Alpha is a common
17 venue to post information.

18 But I don't recall, as I sit here, Seeking Alpha, that
19 the -- since I'm familiar with it, I would have picked up in
20 the Factiva searches, but I don't recall the name coming up.

21 Q. Are you aware that Seeking Alpha is a blog that is often
22 used to obtain information, whether true or false, or
23 disseminate information regarding small, micro, and nano cap
24 stocks?

25 A. And as well as very large stocks.

J423TUZ4

Voetmann - Cross

1 Q. Very large stocks, too?

2 A. Yes.

3 Q. You are aware that Seeking Alpha has some reasonable
4 measure, some large measure of readership, correct?

5 A. Well, as I understand it, it changes all the time, but you
6 can be a premier subscriber where you get these blogs before
7 it's disseminated to the market. Or it can be just someone who
8 is subscribing to the blog when they come out. So I understand
9 they have different levels of access to the information that
10 might come out.

11 Q. Okay. But it's read by investors, correct? Certain
12 investors?

13 A. Certain investors, the majority of Seeking Alpha readers,
14 as I understand it, since I've studied it, is typically short
15 sellers or people engaging in short selling activity.

16 Q. What about day traders?

17 A. Well, day traders might also read that, yes. But I would
18 also say it's not, I don't believe and I don't think it is a
19 common disseminated to all investors. But --

20 Q. Have you heard or read any studies that identified Seeking
21 Alpha as market moving at times?

22 A. I've seen a few studies where Seeking Alpha have moved the
23 market allegedly by posting inadequate or incorrect
24 information. So at times, because you can post a blog without
25 the owners of whoever runs Seeking Alpha actually verifying

J423TUZ4

Voetmann - Cross

1 information, so there is different levels of blog posting. One
2 is no verification, but there is also other times of blog
3 postings where it is somewhat verified.

4 Q. Seeking Alpha wasn't captured in your Factiva search,
5 correct?

6 A. Like I said, I don't recall Seeking Alpha as a term that
7 came up in any of the headlines or the lead paragraphs. So, to
8 the best of my knowledge, I don't believe it was. But it is
9 possible it was somewhere in some article.

10 Q. On June 20 -- you include June 25 in your trading?

11 THE COURT: In his what?

12 MR. WEITZMAN: I'm sorry. Just one second.

13 Q. You included June 25, 2009 as one of the 11 days that
14 comprised the \$10 million loss amount, correct?

15 A. It was one of the days that was statistically significant.
16 Correct.

17 Q. And are you aware, sir, that the day before June -- on
18 June 24, 2009, KIT Digital filed for a registration of public
19 offering of common stock?

20 A. I recall seeing an article about them registering.

21 Q. Okay. Let's put up your report, Government Exhibit V1.
22 And let's go to June 25 and June 24, 2009. Which is page C3.
23 Is that up on your screen?

24 A. June 25 you said?

25 Q. I apologize. That's the wrong document. I was looking for

J423TUZ4

Voetmann - Cross

1 your Factiva report which is Defendant's Exhibit F115. Putting
2 up June 24 and June 25, 2009, which is page one of Defendant's
3 Exhibit F114.

4 Do you see June 24 and June 25 -- June 24, 2009?

5 A. I do.

6 Q. There's no news reported on June 25, 2009, correct?

7 A. That's correct.

8 Q. The only news that one sees is news on June 24, 2009,
9 correct?

10 A. Yes, that's the news about the filing for a public offering
11 of common stock, plus the registration for public offering of
12 common stock. So there's four articles.

13 Q. Do you know what time of day the June 24 news stories were
14 published?

15 A. I would have to go back and look at the articles again.

16 Q. Well, one of the articles on June 24 is an article reported
17 on market news publishing, correct? June 24, 2009?

18 A. That's correct.

19 Q. I'm putting on the screen what's marked as Defendant's
20 Exhibit F115. Is this the article that was reported on
21 Factiva?

22 A. That appears to be, yeah.

23 Q. And the date and time stamp on that article is June 24,
24 2009, at 1500 hours, correct?

25 A. Yes, so 3 o'clock in the afternoon.

J423TUZ4

Voetmann - Cross

1 Q. Have you done any analysis to determine whether the
2 confounding news regarding the filing of a public offering of
3 common stock was fully price impacted within the one hour
4 remaining of trading after this was published?

5 A. I have not. But as a general matter of principles, if you
6 talk about market efficiency, you would expect that an hour
7 would be sufficient to incorporate that information.

8 Q. That's an assumption you are making, having not studied it
9 with respect to KIT Digital, correct?

10 A. Having studied many offerings and having studied, written
11 many articles about market efficiency using event studies,
12 that's a common assumption and a lot of textbooks as well as
13 articles would support a notion that the market would respond
14 rapidly and instantly to information. So an hour might be
15 sufficient to incorporate that information.

16 Q. Sir, that article was dated June 24, 2009, right?

17 A. June 24, 2009.

18 Q. 3 p.m.

19 A. Right.

20 Q. What market was KIT Digital trading on at that time?

21 A. So it was around the same time when they moved over to
22 Nasdaq, so I don't recall right now if they had already moved
23 to Nasdaq.

24 Q. It was trading in the over-the-counter market, correct?

25 A. Sure.

J423TUZ4

Voetmann - Cross

1 Q. Didn't you testify --

2 THE COURT: Do you know whether it was trading on the
3 over-the-counter market or on Nasdaq? Do you know as of the
4 date of June --

5 THE WITNESS: I don't recall as of this date.

6 Q. Does it refresh your recollection that KIT Digital was
7 listed on the Nasdaq as of August 13, 2009?

8 A. That sounds about right.

9 Q. So June 24, 2009 was before KIT Digital got listed on the
10 Nasdaq, correct?

11 A. Yes.

12 Q. And when it is an over-the-counter stock, you testified
13 earlier it is a less liquid stock?

14 A. It is less liquid, but in the sense it's about to go to
15 Nasdaq, it might have risen to a level where it's become more
16 liquid. I haven't done any market efficiency studies. Just
17 because you're trading OTC does not mean that you wouldn't have
18 an efficient market and the market wouldn't respond to
19 information about a stock.

20 Q. Let's turn to June 10.

21 In an effort to speed this up, your Honor, I'll move
22 on.

23 June 10, 2010. I'm sorry. Not June 10. Actually, if
24 we can do June 10, 2010. We looked at June 10, 2010 earlier,
25 correct?

J423TUZ4

Voetmann - Cross

1 A. I believe so.

2 Q. That's a day of trading when there's a very low number of
3 shares purchased by Maiden, correct?

4 A. Correct.

5 Q. And June 10, 2010 is on your list as one of the 11 days,
6 correct?

7 A. Correct.

8 Q. Now, showing Defendant's Exhibit F114, and turning to
9 June 10, 2010, there is one article on June 10, 2010, titled
10 "Index PX Rose by 2.2 9 percent on Thursday," correct?

11 A. Hmm-hmm, yes.

12 Q. There are no other articles on June 10, 2010, correct, that
13 you analyzed?

14 A. That's correct.

15 Q. Putting up on the screen what's been marked as Defendant's
16 Exhibit F116. This is what's called a Form 4 for trading by
17 Isaza Tuzman in KIT Digital dated June 10, 2010.

18 MR. WEITZMAN: We offer Defendant's Exhibit F116.

19 THE COURT: Any objection?

20 MR. NAFTALIS: No, your Honor.

21 THE COURT: F116 is received.

22 (Defendant's Exhibit F116 received in evidence)

23 Q. Is it correct to say, sir, that trading by the CEO,
24 purchases stock by the CEO of a publicly traded company can
25 have a market moving effect?

J423TUZ4

Voetmann - Cross

1 A. Do you mind scrolling down so I can see the top half.

2 Q. Yes.

3 A. Okay.

4 Q. Let me, if I can rephrase, sir. You didn't evaluate this
5 Form 4 to determine whether it was confounding, correct?

6 A. If you mind going back to the previous exhibit, there was
7 a -- on the next day, there was an article pick up by the
8 public press that he had in fact purchased those shares. And
9 so the market incorporated that on June 11, that's when they
10 learned about this order that was placed on the 10th.

11 Q. Excuse me. Sir, the market has access to SEC filings,
12 correct?

13 A. We all have access to SEC filings.

14 Q. Are you aware that the June 10 filing by Mr. Isaza Tuzman
15 purchasing stock was filed in the morning on June 10, 2010, not
16 at the end of the day?

17 THE COURT: How would he know that?

18 MR. WEITZMAN: Let's establish it, your Honor.

19 THE COURT: Does the Form 4 indicate the time it was
20 filed?

21 MR. WEITZMAN: No. I apologize, your Honor. I'm
22 going to put up Defendant's Exhibit F117.

23 Q. Do you recognize this document, sir?

24 A. I do.

25 Q. Does the SEC capture the date and time that filings are

J423TUZ4

Voetmann - Cross

1 made on Edgar?

2 A. It captures the -- if you look, your Honor, the accepted to
3 the left. It says accepted the filing at 10:57.

4 I have to go back, that may or may not be the time
5 that's actually released on Edgar. But it's been accepted into
6 Edgar.

7 Q. So, your testimony is that any price impact resulting from
8 this filing could only be impacted on June 11, 2010. Is that
9 your testimony?

10 A. My testimony is that the press picks up this filing on
11 11th. The question is still whether this -- and I've seen
12 situations in Edgar where it's been accepted, but it might not
13 have been publicly available at that time. So if we know the
14 time when it was made publicly available, that would be
15 important.

16 But that's my testimony, that it was picked up by the
17 press on the 11th.

18 Q. Sir, it was picked up by the press that you reviewed on
19 Factiva, correct?

20 A. Correct.

21 Q. Okay. Let's put up Defendant's Exhibit F118. Do you
22 recognize an M2 press wire? Do you recognize that as a press
23 wire?

24 A. It says it is a press wire.

25 Q. This is the article you're referring to on your Factiva

J423TUZ4

Voetmann - Cross

1 database, right, on June 11. Do you see that?

2 A. I do see that.

3 Q. Okay. And you coded this as a June 11 report, correct?

4 A. There is a date right there where you're highlighting that
5 says June 11, 2010.

6 Q. Do you see a bit below that that it's reported by a website
7 titled insidercow.com on June 10, 2010, at 10:57 a.m.?

8 A. I do.

9 Q. 10:57 a.m. is the exact time that it was accepted for
10 filing by the SEC in Defendant's Exhibit 117, correct?

11 A. Correct.

12 Q. Is it fair to say that the Form 4 that Mr. Isaza Tuzman
13 filed on June 10, in the morning, was publicly reported on
14 June 10 in the morning?

15 A. It seems to be. Assuming that website is correct, it seems
16 to be the case that it would have been available at 10:57.

17 Q. That would be a confounding piece of news that you did not
18 evaluate on June 10, correct?

19 A. Yeah, again, I used my professional judgment looking at
20 Factiva. In this case had I had access to the additional
21 article you found, it's possible I would have changed that
22 mark. But if you look at that exhibit, again, with 11 days, I
23 believe that day had a very minor if almost no impact on the
24 10.4 million.

25 Q. Okay. So let me move on because I think there are many

J423TUZ4

Voetmann - Cross

1 days we need to discuss. Another day among the 11 that you
2 identified is May 10, 2011.

3 I'm sorry. Do you see that? That's the final date
4 we've spoken a bit about that already, right?

5 A. Yes.

6 Q. Are you aware that on May 10, 2011, a date that you
7 included in your appendix as one of the 11 days, is a date that
8 KIT Digital filed a 10-Q?

9 A. I have to look at the list of articles again.

10 Q. Okay. I'm marking Defendant's Exhibit F119. And this is
11 May 10, 2011, and it is a KIT Digital form 10-Q, do you see
12 that?

13 A. I do.

14 Q. So you now understand that on May 10, 2011, there was a
15 form 10-Q filed. Is that correct?

16 A. I see a form 10-Q here in front of me.

17 Q. Marking Defendant's Exhibit F120. Does this indicate to
18 you that the May 10, 2011, filing of the 10-Q by KIT Digital
19 was filed or accepted for filing at 10:44 a.m. that day,
20 correct?

21 A. That's correct.

22 Q. You didn't review this 10-Q to determine whether it was
23 confounding, correct?

24 A. I'd have to look at the articles on Factiva to see if they
25 picked up the information in this article.

J423TUZ4

Voetmann - Cross

1 Q. My question is a bit different. My question is whether you
2 reviewed this quarterly report to determine whether any
3 information in the quarterly report was confounding?

4 A. I did not.

5 Q. Putting on the screen what's been marked as Defendant's
6 Exhibit F121. Which is a May 10, 2011, article titled "Shares
7 on Prague Bourse Slightly Fall While CEZ KIT Digital Grow."

8 Do you see that?

9 A. The title, yes.

10 Q. You see in the second line, the middle of the page, it says
11 KIT Digital put on more than 7 percent to -- I'm sorry I don't
12 know the Czech -- I think Czech korunas -- 200 after announcing
13 its first quarter results.

14 Do you see that?

15 A. I do.

16 Q. Fair to say that there was press out there that suggested
17 that investors reacted positively to the issuance on May 10,
18 2011 of KIT Digital's quarterly report?

19 A. Like you, I don't know if 200 koruna is a lot or small.

20 Or --

21 Q. 7 percent.

22 A. If it is 7 percent, it would suggest they were positive by
23 the news.

24 Q. Notwithstanding that, you concluded there was no
25 confounding news on May 10, 2011, that could explain a

J423TUZ4

Voetmann - Cross

1 statistically significant price increase? Is that fair to say,
2 that's what your chart reflects?

3 A. So based on the available information on Factiva, that's
4 what I concluded, correct.

5 Q. Let's go to September 20, 2009. I'm sorry. September 21,
6 2009, which is on your chart, correct?

7 A. Correct.

8 Q. On September 21, 2009, you concluded there was no
9 confounding news that might effect the stock price on that
10 date, correct?

11 A. Again, based on the Factiva available articles.

12 Q. There were articles that weren't available on Factiva,
13 correct?

14 A. There might be. There might -- I think I testified earlier
15 there are other sources, but Factiva covers the majority of all
16 the news outlets.

17 Q. One such news article is an article dated September 21,
18 2009, at 11:40 a.m., Eastern Time, that is titled -- that is
19 the smallcapsentinel.com, "The Explosion of Digital Media." Do
20 you see that?

21 A. Yeah, I'm not familiar with smallcapsentinel.com. It might
22 be a blog, but I'm not familiar with it.

23 Q. Do you understand that KIT Digital was in the digital media
24 business?

25 A. Yes.

J423TUZ4

Voetmann - Cross

1 Q. In the first line of that article, it states, "For many of
2 us, we need look no further than our own homes and wallets to
3 confirm the ever expanding market for digital video."

4 Do you see that?

5 A. I do.

6 Q. And in the second paragraph, it references KIT Digital as
7 one of the companies that's in the digital media space,
8 correct?

9 A. Among other companies as well, yes.

10 Q. Now, this is not one of the articles that was captured for
11 September 21, 2009, in your Factiva database?

12 A. Like I said, I'm not familiar with smallcapsentinel.

13 Q. Let's go to September 21, 2009. This is Defendant's
14 Exhibit F114. You have no articles listed on your Factiva
15 database for September 21, 2009, correct?

16 A. Correct.

17 Q. And you have no articles or reporting for September 20,
18 2009, either, correct?

19 A. I don't see September 20 either.

20 Q. So you concluded there is no confounding news on
21 September 20, 2009 or September 21, 2009, correct?

22 A. That's correct.

23 Q. Okay. If I can have -- do you have Government Exhibit 3305
24 there?

25 MR. WEITZMAN: I don't recall if this one was also

J423TUZ4

Voetmann - Cross

1 offered, but we offer Government Exhibit 3305 which is the
2 research analyst reports produced by the government.

3 MR. NAFTALIS: No objection.

4 THE COURT: 3305 is received.

5 (Government's Exhibit 3305 received in evidence)

6 Q. If you turn to page 305 to 311 of the document. This is a
7 September 20, 2009, research analyst report, correct, about KIT
8 Digital.

9 A. That's correct. This is a -- yes.

10 Q. This isn't one of those computer generated reports. This
11 is an actual research report, correct?

12 A. I don't see a name of the author of the report on here,
13 which is typically an indication.

14 Q. I'm sorry. I couldn't hear you.

15 A. I don't see a name of the author of the report, which is a
16 common indication that it might be a computer generated.

17 Q. Okay.

18 A. So I don't see that anyone actually, other than the service
19 NEC Price Target Research. This might very well be a computer
20 generated report.

21 Q. You don't know whether it's computer generated or not?

22 A. I have to go search the name of this Price Tag Research is
23 not something that comes up. I'm not familiar with them as a
24 research analyst, it is not a common research analyst. So this
25 appears, could easily appear to be a computer generated report.

J423TUZ4

Voetmann - Cross

1 Q. In any event, sir, this was issued on September 20, 2009,
2 correct?

3 A. That's the date of it, yes.

4 Q. There is a commentary at the very first line, "KIT Digital
5 has a firm overall rating of B (positive)," correct?

6 A. That's correct.

7 (Continued on next page)

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J42VTUZ5

Voetmann - cross

1 BY MR. WEITZMAN:

2 Q. The commentary continues. This wasn't captured in your
3 Factiva database search; correct?

4 A. That's correct.

5 Q. So you didn't do an analysis of this to determine whether
6 it was confounding or not; correct?

7 A. That's correct, I did not include -- and I typically don't
8 include computer-generated reports where there's no real
9 opinion other than they have -- as you can see in the chart
10 there's a good indicator that -- just studied historical data,
11 historical price information to come up with a prediction. So
12 that's the computer-generated part of it.

13 So there's no analyst that actually make -- typically
14 in these types of situation, no analyst have actually talked to
15 the company or participated in conference calls or activities
16 that would give them information about KIT Digital, it's simply
17 based on just financial data.

18 Q. Sir, are you making a determination right now that it's not
19 confounding just on the fly, like that?

20 A. No, no. We were talking about --

21 THE COURT: No, he's telling you, as he has many times
22 already, that he doesn't regard these computer-generated
23 reports as worth considering. I think that's what he said a
24 number of times now.

25 MR. WEITZMAN: I'm not sure whether this is a

J42VTUZ5

Voetmann - cross

1 computer-generated report.

2 THE COURT: He has indicated that there are a number
3 of markers that suggest to him that it is a computer-generated
4 report.

5 MR. WEITZMAN: Okay.

6 BY MR. WEITZMAN:

7 Q. On one of your other -- one of the other days that you
8 include in your 11 is May 20th, 2010; correct?

9 I'm sorry, I may have missed your answer.

10 A. No, I don't see -- oh, May 20th, 2010.

11 Q. Yes.

12 A. Correct.

13 Q. Are you aware, sir, that on May 20th, 2010, KIT Digital
14 filed an 8-K announcing the acquisition of Benchmark Broadcast
15 Systems?

16 A. I'll have to look at my list of Factiva articles, if it was
17 showing up.

18 Q. This is marked Defendant's Exhibit F123. It's an 8-K dated
19 May 20th, 2010 for KIT Digital.

20 Sir, you didn't review this document -- put aside
21 Factiva. You didn't review this document to determine whether
22 it was confounding; correct?

23 A. Excuse me. Did you say May 10 or May 14?

24 Q. No. The filing is May 20. Do you see that on the top
25 page, sir?

J42VTUZ5

Voetmann - cross

1 A. Okay. And on the article here, the first line there, right
2 below the name of KIT Digital, it says May 14th, 2010.

3 Q. Does that confuse you as to what date this was actually
4 filed on the SEC EDGAR system?

5 A. Maybe they wrote the 8-K and then they filed it on the
6 20th. But this would be a week earlier.

7 Q. Okay. But, in any event --

8 THE COURT: Please don't talk over each other.

9 MR. WEITZMAN: I wasn't intending to, your Honor.

10 I apologize.

11 Q. In any event, you understand that this 8-K was filed, made
12 publicly available, on May 20th, 2010?

13 MR. NAFTALIS: Your Honor, objection.

14 THE COURT: Sustained.

15 MR. NAFTALIS: If we could just look at the last page
16 of this document, where there is the press release from May
17 17th. Obviously you issue 8-Ks days later with press releases.
18 The day of the 8-K isn't indicative of when the press release
19 came out. Here it says May 17th is when the press release came
20 out on the second-to-last page.

21 So if we're going to keep doing this, I think it would
22 be nice to show the witness all the -- rather than flashing
23 pages and trying to get quick answers, give him the document
24 and let him look through it.

25 MR. WEITZMAN: I'm happy to give him the document,

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Voetmann - cross

1 your Honor. I did not appreciate the May 17th press release
2 that's attached to the 8-K. So I will withdraw this exhibit.

3 MR. NAFTALIS: It might help also to give the witness
4 actually the documents of the Factiva, because sort of game is
5 to flash things and ask him if it's on Factiva.

6 MR. WEITZMAN: Your Honor, it's not a game. I
7 actually asked him if he would like his Factiva database
8 spreadsheet, and he said no, he can see it on the screen.

9 MR. NAFTALIS: You keep going back and forth with the
10 thing you want him to look at, and then hiding the Factiva.
11 Let's just give him a hard copy so it's an efficient use of
12 time.

13 THE COURT: Proceed.

14 MR. WEITZMAN: Thank you, your Honor.

15 Your Honor, I'm trying to cut some stuff, so if you'd
16 just indulge me for a moment.

17 (Pause)

18 BY MR. WEITZMAN:

19 Q. If we can turn to July 2nd, 2010. That's another one of
20 the 11 days you identified in your loss amount calculation; is
21 that correct?

22 A. Right.

23 Q. Maiden bought -- well, withdraw that. On May 11th -- I'm
24 sorry, July 2nd -- withdrawn.

25 On July 2nd, 2010, you calculate approximately \$1.64

J42VTUZ5

Voetmann - cross

1 million of loss amount on that date.

2 A. Correct.

3 Q. Is that correct?

4 Let's turn to your Factiva database.

5 Would you like a copy of your Factiva document, sir?

6 A. If we have many more days to go through, it would be nice
7 to have it.

8 Q. Okay.

9 THE COURT: You know, that raises another question,
10 which is how much longer is this examination going to go on?
11 Because I have another matter. Well, if it's really going to
12 be five minutes, fine; if it's going to be a half an hour, not
13 fine. So if you're going to commit to five minutes, meaning
14 this is over at ten of, we'll proceed. But absent that, we're
15 not going to proceed any further.

16 MR. WEITZMAN: I appreciate that, your Honor.

17 How about can I commit to regrouping --

18 THE COURT: No. All right. Forget it.

19 We're done for today. We'll have to set another date.

20 MR. WEITZMAN: Your Honor --

21 THE COURT: We're done. We are done. Done.

22 MR. WEITZMAN: I have another document.

23 THE COURT: Did you hear me? We're done.

24 MR. WEITZMAN: Yes, your Honor.

25 THE COURT: We are adjourned for today.

J42VTUZ5

Voetmann - cross

1 We're adjourned.

2 MR. WEITZMAN: I'm adjourning.

3 I just would like there not to be a misimpression

4 about what I was about to say, your Honor.

5 THE COURT: We're adjourned.

6 You can step down.

7 THE WITNESS: Thank you.

8 (Witness excused)

9 THE COURT: I'll hear the next matter.

10 The parties will clear the tables.

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J42VTUZ5

Voetmann - cross

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